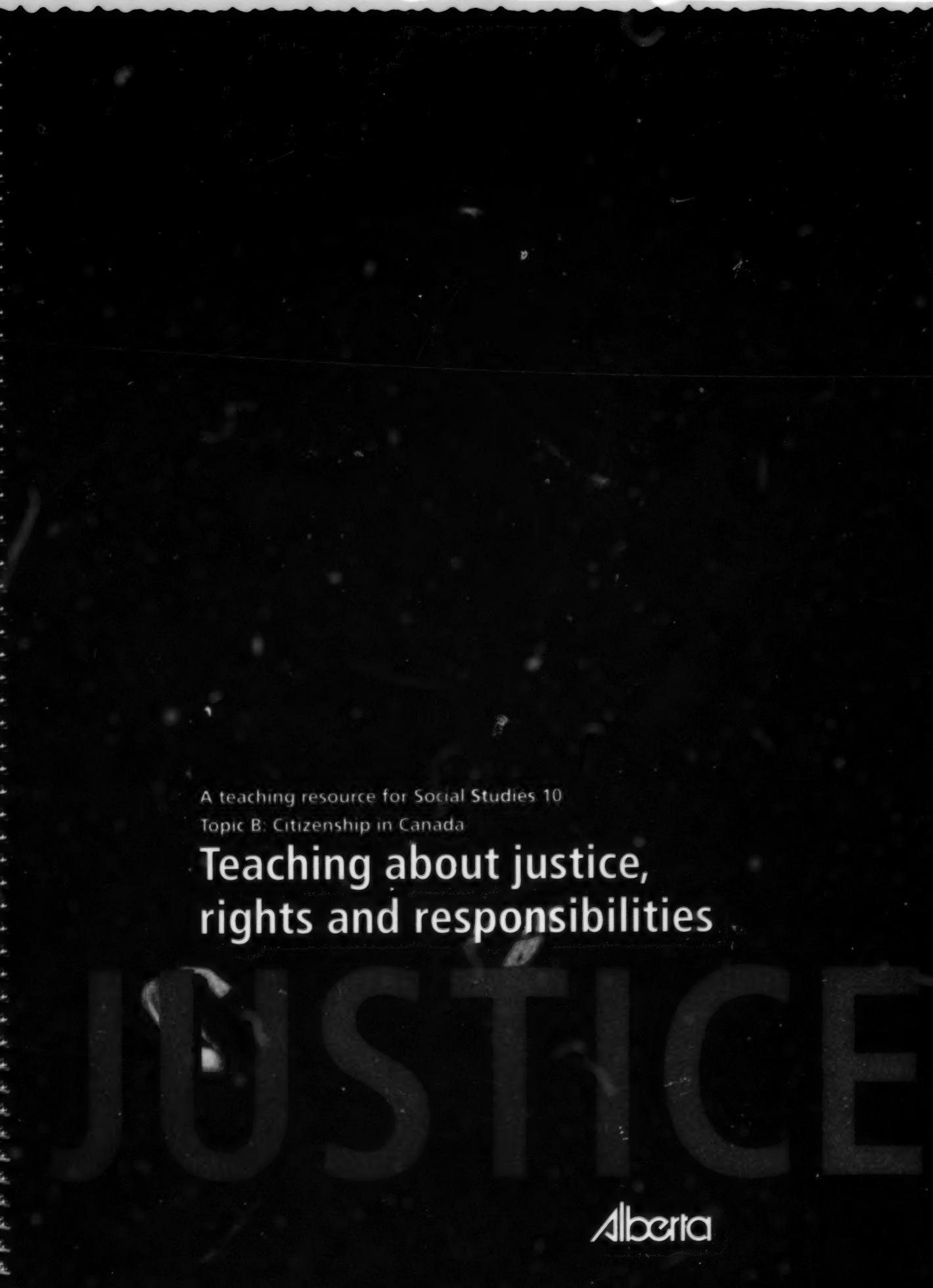

A teaching resource for Social Studies 10

Topic B: Citizenship in Canada

Teaching about justice, rights and responsibilities

Alberta

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A teaching resource for Social Studies 10 Topic B: Citizenship in Canada

Teaching about justice, rights and responsibilities

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Overview

This teaching resource is intended to increase and encourage students' awareness and understanding of the justice system and citizenship in Alberta and Canada. It addresses selected learning outcomes in the Alberta Program of Studies for Social Studies 10 Topic B: Citizenship in Canada.

How is justice a fundamental aspect of citizenship?

The law affects Canadians every day. There are laws against crimes such as robbery or murder. But there are also laws that apply to us when we pursue everyday activities, such as driving a car, renting an apartment, getting a job or getting married. There are laws concerning almost every aspect of our daily lives.

PRINCIPLES OF THE LAW

The fundamentals of Canadian law are based on common sense. Since these ideas and principles concern every Canadian, they are something every Canadian should strive to understand. What is the "law"? Where does it come from? What is it for? How does it operate?

BALANCE

A law is more than a command. It is an attempt to balance fairly the rights and obligations that people share as members of society. For example, when a law gives a person a legal right, it may also impose a legal duty, either on the person who has the right or on another person or persons. The overall apportionment of rights, duties, privileges and powers, and how they are administered, makes up our legal system.

PRIVILEGES AND POWERS

LEGAL RIGHTS AND DUTIES

Our system of justice can function well only if people understand their legal rights. But people must also live up to their legal responsibilities, such as being willing to serve on a jury or coming forward to testify at a trial.

CITIZENS IN A DEMOCRATIC SOCIETY

Above all, citizens in our democratic society have a duty to learn as much as they can about the laws and about how the justice system works.

Adapted from http://canada.justice.gc.ca/en/dept/pub/just/foreword.html.

Purpose of this resource

This teaching resource is designed to integrate learning about the importance of the justice system with learning about citizenship. The resource is based on key understandings and concepts of the Alberta Social Studies 10 Program of Studies, which offer a strong link to the principles and values that have created and maintain our judicial system.

This teaching resource provides a flexible format that is based on a variety of teaching and learning activities and comprehensive backgrounders on six aspects of the Canadian judicial system:

- An introduction to the justice system
- Constitutional justice and the *Charter of Rights and Freedoms*
- Aboriginal justice
- Criminal justice
- Civil and family justice
- Youth justice.

The activities and information are organized around questions that:

- Focus on the connection of the judicial system to citizenship
- Develop concepts related to the functions of government, individual and collective needs, and the roles of citizens
- Emphasize understandings of rights and responsibilities.

Specific correlation to key understandings, generalizations, concepts and related facts in the Alberta Social Studies 10 Program of Studies is detailed on an overview page at the beginning of each thematic section. This teaching resource is meant to supplement, not replace, existing units and resources already used by teachers and students.

What is the purpose of law?

SAFEGUARDS

Ever since individuals began to associate with other people — to live in society — laws have been the glue that has kept society together. Laws regulating our business affairs help to ensure that people keep their promises. Laws against criminal conduct help to safeguard our personal property and our lives. The law must provide a way to resolve disputes peacefully.

RULE OF LAW

We need law, then, to ensure a safe and peaceful society in which individuals' rights are respected. But we expect even more from our law. Some totalitarian governments have cruel and arbitrary laws, and police forces are free to arrest and punish people without trial. Strong-arm tactics may provide order, but we reject this form of control. The Canadian legal system respects individual rights while at the same time ensuring that society operates in an orderly way. In Canada, we also believe in the Rule of Law, which means that the law applies to every person, including members of the police and other public officials who must carry out their public duties in accordance with the law.

What are the goals of the law?

In our society, laws are not only designed to govern our conduct; they are also intended to give effect to social policies. For example, some laws provide for benefits when workers are injured on the job, for health care or for loans to students who otherwise might not be able to go to post-secondary schools.

FAIRNESS
INDIVIDUAL RIGHTS AND FREEDOMS

Another goal of the law is fairness. The law should recognize and protect certain basic individual rights and freedoms, such as liberty and equality. The law also serves to ensure that strong groups and individuals do not use their powerful positions in society to take unfair advantage of weaker individuals.

DEMOCRACY

Despite the best intentions, some laws are created and then later recognized as being unjust or unfair. In a democratic society like Canada, laws are not carved in stone but must reflect the changing needs of society. In a democracy, anyone who feels that a particular law is flawed has the right to speak out publicly and to seek to change the law by lawful means.

Adapted from http://canada.justice.gc.ca/en/dept/pub/just/CSJ_page3.html.

The importance of teaching about the judicial system

Students are affected by the judicial system every day of their lives. The development of our communities, our province and our nation depends on having citizens who understand the political process, the role of the judicial system in entrenching and safeguarding rights, and the obligations and responsibilities of citizenship. This teaching resource provides a valuable, Alberta-focused supplement to any resources or existing units on citizenship.

How does change in society affect its citizens?

LAW AND JUSTICE

Our legal system provides a unique and valuable framework for Canadian society. It is based on the rule of law, on freedom under the law, on democratic principles and on respect for others. Our tradition of law and justice is an important heritage for every Canadian. As society changes, we must make sure that this tradition will meet the challenges of the future.

MORAL
LEGAL

We live in a world where change is taken for granted. Every day, we hear about new social issues, new medical developments and new types of technology. Twenty years ago, the moral and legal questions that concern us today could scarcely be imagined. For example, we are becoming more and more aware of the effects of modern society on our environment and of the immense threat of pollution and our wasteful habits. People are changing their attitudes towards many issues and questions and towards society itself.

How does the law change?

LEGISLATION

As people change the way they live and work, the basic assumptions of our legal system may have to change as well. Old laws may become out of date, or new situations may arise that are not dealt with by any existing law. For example, information is much more important in modern society than it once was. Computer technology makes it easier for one individual to "steal" information from the computer of another person. But when legislators made our laws against theft, they could not have foreseen such a development. This is just one example of how technological and social change makes it necessary to change our laws.

COURTS
ARBITRATION

In addition to new laws in the future, some believe that we may need to change the system of law and justice itself. Many people believe that our trial system is out of date. With the advent of the Canadian *Charter of Rights and Freedoms*, many more cases are coming before the courts. In today's complex society, it can take months and even years to settle disputes. All this means that our court system is being stretched to the limit. Many argue that more informal procedures are needed to encourage people to cooperate in settling disputes out of court. Some disputes are settled today by arbitrators through informal procedures.

Others argue that our legal system concentrates on punishing those who break the law, but neglects the victims of crime. Many people believe that the legal system must be reorganized so that it treats victims more fairly.

MINORITIES
CHILDREN'S RIGHTS

Many other issues are being discussed and debated. Does our legal system discriminate against women, visible minorities or disabled persons? Should Aboriginal Canadians have the right to design their own laws and justice systems? Do children have special rights when their parents divorce? It is clear that the future may bring many changes in our law.

FEDERAL AND
PROVINCIAL
GOVERNMENTS

The law must continue to grow and develop in a changing society. But how do we decide what changes are necessary? Legal experts in the federal and provincial governments are constantly examining our laws and looking for ways to improve them.

DEMOCRATIC
SOCIETY

But the responsibility for changing our laws cannot be left entirely to legislators, lawyers or government officials. In a democratic society, it is the people who must, in the end, decide what they want from the law and help to define the law. The Canadian people must help to define their laws and their system of justice.

Adapted from http://canada.justice.gc.ca/en/dept/pub/just/CSJ_page37.html.

Organization

Teaching with justice themes

This teaching resource is designed to support teaching and learning within Social Studies 10 Topic B: Citizenship in Canada.

Each of the six thematic sections of this resource is designed to be self-contained. Teachers can select which activities and information to use, depending on the curriculum and the needs of the students. A variety of teaching activities are provided in each thematic section so that teachers can meet curricular outcomes in ways that:

- Address different learning styles
- Provide opportunities for individual and group work
- Develop questioning skills
- Focus on inquiry-based learning
- Develop critical and creative thinking skills
- Provide opportunities for research and self-directed study.

Each thematic section includes some or all of the following elements.

Curricular overview

An overview of generalizations, key understandings, concepts and related facts identifies areas of the Alberta Social Studies 10 Program of Studies that are addressed. A complete curriculum correlation for this resource is provided at the end of this introductory section.

Focus questions

Focus questions guide the planning and sequencing of activities selected within each thematic section and link activities and content to curriculum outcomes.

Teacher preparation

Student and teacher resources are referenced for each focus question. Website references are provided and can be used with many of the teaching and learning activities. Rubrics for assessment are provided in the appendix.

Summary

A summary of key content provides a synthesis and advance organizer for the information in the thematic section. The summaries are shorter versions of the information found in the backgrounders. They can be used as an introduction to the section, a review of key content, or an overview of the theme for class or group activities.

Backgrounders

The backgrounders provide information on different aspects of the judicial system. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study, and critical thinking development.

Glossary

The glossary lists key terms and definitions.

Charts, handouts and visual organizers

Charts, handouts and visual organizers, reinforce, enrich and extend the content provided in the backgrounders.

The focus questions for each thematic section include:

An introduction to the justice system

- What are the roles and responsibilities of governments within the judicial system?
- How do citizens participate in the judicial system?
- How does the judicial system ensure and protect rights and responsibilities?

Constitutional justice and the *Charter of Rights and Freedoms*

- How does the government function through the Constitution?
- What rights and responsibilities does the individual have in Canadian society?
- How can constitutional law be changed or challenged?

Aboriginal justice

- How were decisions about Aboriginal rights made by governments in Canada?
- What are the opposing perspectives, and how are differences resolved?
- What rights and responsibilities influence decision making?

Criminal justice

- What is the process for making decisions that affect citizens?
- How does government balance the needs of the individual with the needs of the state?
- How are rights and responsibilities protected through the criminal justice system?

Civil and family justice

- How does the civil justice system resolve questions that involve the needs of the individual and the needs of the state?
- What rights and responsibilities does the individual have in Canadian society?
- How are the rights and responsibilities of families protected by legislation?

Youth justice

- How do governments make decisions that affect youth and society?
- How are the needs of the individual balanced against the needs of the state?
- What are the rights and responsibilities of youth within the justice system?

Social Studies 10 Topic B: Citizenship in Canada

The Social Studies 10 Topic B program offers numerous opportunities to integrate the teaching of the justice system and make connections to active and responsible citizenship.

Responsible citizenship requires an understanding of the structure and function of government, as well as a willingness to exercise the rights and duties of citizenship in a changing Canadian society. Citizenship in a democratic country like Canada is based on the assumption that people will be actively involved in decisions affecting the community and in protecting and respecting basic human rights.

- Alberta Program of Studies for Social Studies 10 Topic B

The activities in each thematic section are developed to meet critical and creative thinking goals and help students address issues and questions for inquiry in the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada.

Critical and creative thinking outcomes

This resource encourages the development of the following critical and creative thinking skills.

Students should acquire the knowledge and skills necessary to:

- Examine the process whereby decisions affecting themselves and society are made
- Design and evaluate alternative methods of providing for the protection of human rights in society
- Examine how questions that involve the needs of the individual and the needs of the state are resolved.

Inquiry issues and questions

This resource supports the use of issues and questions for inquiry from the Alberta Social Studies 10 Program of Studies.

- To what extent should Canada pursue a leadership role in working for the protection of human rights?
- How can citizens influence decision making by governments in Canada?
- What responsibilities does the individual have in Canadian society?
- How are human rights protected in Canada?

Knowledge outcomes

This resource develops generalizations, key understandings and concepts from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada. Detailed curriculum charts are provided at the beginning of each thematic section.

Theme I: Politics and government

Politics are a feature of everyday life

- Decision making
- Organization.

The structure and functions of government in Canada are important

- Democracy
- Constitution
- Division of powers
- Parliamentary system.

Theme II: Citizen participation

The citizen has a role in the political process

- Participation.

Political differences are resolved through a variety of means

- Democratic process
- Negotiation and compromise.

Theme III: Rights and responsibilities

Rights and responsibilities are associated with citizenship

- Rights
- Freedoms
- Justice
- Equality
- Responsibilities.

There are basic human rights that need to be preserved

- Human rights.

There are various means to protect and preserve rights in Canada

- Entrenchment of rights
- Safeguarding rights.

Skill outcomes

This resource supports the development of skill outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada.

Process skills

Students will be expected to develop the ability to:

- Identify and use relevant information from print and nonprint sources
- Distinguish between fact and opinion
- Analyze a variety of alternative positions on a problem or an issue
- Recognize underlying assumptions on an issue.

Communication skills

Students will be expected to develop the ability to:

- Defend a position in a short written assignment
- Convey information and express ideas, using a visual format
- Express themselves effectively in an oral presentation
- Present ideas effectively in class discussion.

Participation skills

Students will be expected to develop the ability to:

- Interact effectively with others in a variety of group settings
- Participate in group decision making
- Choose appropriate strategies for bringing about change in society.

Inquiry skills

Students will be expected to develop the ability to:

- Develop further the creative and critical thinking skills necessary for responsible citizenship
- Develop the ability to consider alternatives, make decisions and substantiate choices
- Examine the processes whereby decisions affecting themselves and society are made
- Propose and evaluate alternative decision-making models
- Use appropriate inquiry models to answer questions, solve problems and resolve issues.

Attitude outcomes

This resource supports the development of attitude outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada.

Students will be expected to develop:

- An appreciation of the rights and responsibilities inherent in the democratic way of life
- A willingness to accept responsibility for the consequences of one's own actions
- An appreciation of and a respect for the rights of others and value peaceful resolution of conflict
- A respect for the rights of others to hold opinions different from one's own
- An appreciation of the fact that citizenship involves participation in the community and the nation.

Any or all of these outcomes can be addressed with this resource.

Using the resource

The ideas and activities in this teaching resource are designed to actively engage students in a study of the judicial system and their citizenship. The activities supplement other units and resources for Topic B in the Alberta Social Studies 10 Program of Studies, but provide a specific focus on the Alberta and Canadian judicial system. Teachers are encouraged to select activities that best meet the needs of their students and their teaching style. All of the ideas in this teaching resource can be modified and adapted; they are presented with this intent.

The following approaches may be used to customize the activities and information in this teaching resource:

- Use the Constitutional justice and the *Charter of Rights and Freedoms* thematic section as a way of linking information to the Aboriginal, Criminal, Civil and family, and Youth justice thematic sections. There are numerous links between these themes.
- Use the visual organizers provided at the end of each thematic section interchangeably. A visual organizer from one thematic section may apply to activities in another thematic section.
- Use the summary pages from each thematic section as an overview of each aspect of the judicial system and to introduce concepts and links.
- Use the student resources as handouts in individual activities or as overheads in class activities.
- Use the backgrounders in a jigsaw research-based approach to teach about different aspects of the judicial system. Provide small groups of students with one thematic section to study and then have them teach another group about it.
- Divide the class into groups and have each group work through one thematic section. Then, in an interesting and interactive way, share the key concepts and information with the rest of the class through a carousel or by creating learning centres.
- Use current controversial Canadian justice issues as a launching point for one or more of the thematic sections; e.g., as a "current events" segment of the Social Studies 10 Topic B program.

1 Introduction to the justice system

This overview section connects the three content themes in Social Studies 10 Topic B: Citizenship in Canada to the justice system in Alberta and Canada. Five aspects of the justice system are introduced:

- Constitutional justice and the *Charter of Rights and Freedoms*
- Aboriginal justice
- Criminal justice
- Civil and family justice
- Youth justice.

Introduction to the justice system

Focus questions and activities

In this thematic section, there are three focus questions and a variety of learning activities. The focus questions and activities in the introductory section are designed to:

- Organize the information in this thematic section around the three themes in the Alberta Social Studies 10 Program of Studies Topic B
- Involve students in critical and creative thinking activities
- Establish questions and issues for inquiry.

Teacher preparation

These student and teacher resources support the activities below.

- Backgrounder: Sources of Canadian law
- Backgrounder: Roles and responsibilities in the justice system
- Process flowchart: Roles and responsibilities
- Visual organizer: Compare-contrast map
- Websites

The Alberta Justice website www4.gov.ab.ca/just offers information on different aspects of the justice system.

The Canada Justice website www.canada.justice.gc.ca/en/jus/far/Index.htm offers information on federal justice and acts of Parliament.

The Canada Justice website www.canada.justice.gc.ca/en/dept/pub/just/CSJ_page7.html offers information on sources of Canadian law.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What are the roles and responsibilities of governments within the judicial system?

Comparing provincial and federal roles

Have students research the roles and responsibilities of the provincial and federal governments within the justice system. Ask them to complete a compare and contrast map that identifies the similarities and differences in the roles and responsibilities of the following positions:

- Alberta Minister of Justice and Attorney General
- Alberta Solicitor General
- Federal Minister of Justice and Attorney General
- Federal Solicitor General.

Sources of Canadian law

Have students research sources of Canadian law by using additional print and Internet sources. Students may be asked to investigate the background and development of the justice system using statements such as the following to initiate their research.

- Criminal and civil law has its basis in English common and statutory law.
- The tradition of civil law is based on Roman law, which was consolidated by the Roman Emperor Justinian.
- Aboriginal rights are those related to the historical occupancy and use of the land by Aboriginal peoples; treaty rights are those set out in treaties entered into between the Crown and a particular group of Aboriginal people.
- Society continues to evolve dynamically ahead of the lawmakers, necessitating a never-ending cycle of law reform.
- The *Constitution Acts* of 1867 and 1982 established the allocation of power between federal and provincial jurisdictions.

Teacher preparation

These student and teacher resources support the activities below.

- Backgrounder: Roles and responsibilities in the justice system
- Backgrounder: Roles and responsibilities of citizens
- Backgrounder: The court system
- Process flowchart: The court system
- Websites

The Canada Justice website www.canada.justice.gc.ca/en/dept/pub/just/CSJ_page33.html offers information on the role of the citizen in the legal system.

The Alberta Justice website www4.gov.ab.ca/just offers information on the people involved in the justice system.

The Alberta courts website www.albertacourts.ab.ca offers information on the courts in Alberta that are administered by the province.

How do citizens participate in the judicial system?

Concept map

Have students create a concept map that identifies the people involved in the judicial system. Ask them to identify the roles and responsibilities of lawyers, prosecutors, judges, the public and the courts on their concept maps. When students complete their concept maps, have them work in small groups to discuss the following questions:

- Are there areas of potential conflict between levels of government and the court system?
- What changes should be made to the justice system to resolve areas of conflict?

The participation of citizens

Ask students to discuss the participation of citizens within the justice system. Have them use examples from the following contexts:

- Participation in the jury system
- Responsibility to know the law
- Initiatives to change the law.

Citizen involvement

Have students work in small groups to create a poster that shows how legal action and the court system allow for the resolution of differences. Have students compare the resolution of differences through legal action and the court system to other methods that citizens can use to resolve differences, such as:

- Plebiscites
- Referendums.

For high schools in Edmonton and Calgary, the Provincial Court/Court of Queen's Bench/Canadian Bar Association Public Legal Education Project is able to provide representatives from the justice system to speak to students in Social Studies 10 classes. Please contact Assistant Chief Judge Janet Franklin of the Provincial Court of Alberta at (780) 427-7805 for more information.

Teacher preparation

These student and teacher resources support the activities below.

- Backgrounder: Constitutional justice and the *Charter of Rights and Freedoms*
- Backgrounder: Aboriginal justice
- Backgrounder: Criminal justice
- Backgrounder: Civil and family justice
- Backgrounder: Youth justice
- Visual organizer: Comparison flowchart
- Websites

The Alberta Justice website www4.gov.ab.ca/just offers information on roles and responsibilities in the justice system.

How does the judicial system ensure and protect rights and responsibilities?

Comparing rights and responsibilities

Have students review the concept of rights. Ask them to complete a flowchart that compares how the needs and rights of the individual and society are protected by different aspects of the justice system:

- Constitutional
- Aboriginal
- Criminal
- Civil and family
- Youth.

Overview carousel

Have students work in small groups to develop an introduction to one aspect of the justice system. Ask each group to create a poster that illustrates the key ideas of each aspect. Have groups display their posters in an area of the classroom. Ask groups to leave a blank piece of paper beside each poster. Have groups rotate through each of the poster displays and brainstorm issue questions that relate to each area of the justice system.

Media search

Have students work in small groups to conduct a media search, using current newspapers. Ask them to find articles or advertisements that relate to different aspects of the legal system. Create a bulletin board display of their findings.

Introduction to the justice system

Backgrounders

The backgrounders provide information about different aspects of the justice system and can be used in a variety of ways. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study and critical thinking development.

BACKGROUNDER

Sources of Canadian law

English Law and the Code Napoleon

What is the Canadian justice system based on?

Canada's present legal system derives from various European systems brought to this continent in the 17th and 18th centuries by explorers and colonists. Although the Aboriginal peoples whom the Europeans encountered here each had their own system of laws and social controls, over the years the laws of the encroaching immigrant cultures began to prevail. After the English defeat of the French at Quebec in 1759, the country fell almost exclusively under English law. Except for Quebec, where the civil law is based on the French *Code Napoleon*, Canada's criminal and civil law has its basis in English common and statutory law.

What are the principles of common law?

The common law, which developed in Great Britain after the Norman Conquest, was based on the decisions of judges in the royal courts. It is called judge-made law because it is a system of rules based on "precedent." Whenever a judge makes a decision that is to be legally enforced, this decision becomes a precedent: a rule that will guide judges in making subsequent decisions in similar cases. The common law is unique in the world because it cannot be found in any "code" or "legislation"; it exists only in past decisions. However, this also makes it flexible and adaptable to changing circumstances.

What is civil law?
How does it differ from common law?

The tradition of civil law is quite different. It is based on Roman law, which was consolidated by the Roman Emperor Justinian. The law in ancient Rome was scattered about in many places: in books, in statutes, in proclamations. Justinian ordered his legal experts to put all the law into a single book to avoid confusion. Ever since, the civil law has been associated with a "civil code" containing almost all private law. Quebec's *Civil Code* was first enacted in 1866, just before Confederation, and, after periodic amendments, was recently revised. Like all civil codes, such as the *Code Napoleon* in France, it contains a comprehensive statement of rules, many of which are framed as broad, general principles so as to deal with any dispute that may arise. Unlike common-law courts, courts in a civil-law system first look to the *Code*, and then refer to previous decisions for consistency.

What do you know about treaty rights?

When discussing the law as it pertains to Aboriginal people in Canada it is also necessary to consider Aboriginal rights and treaty rights that are protected under the Constitution. Aboriginal rights are those related to the historical occupancy and use of the land by Aboriginal peoples; treaty rights are those set out in treaties entered into between the Crown and a particular group of Aboriginal people.

Law reform: An endless cycle

Although much of our law has been inherited from European legal traditions, as society grows and develops it cannot rely entirely on tradition. Sometimes there is an urgent need for new laws, or for old laws to be changed, and the common law and civil law may evolve too slowly to meet this need. So, even as government ponderously enacts reforms designed to address changing ethics and morality, society continues to evolve dynamically ahead of the lawmakers, necessitating a never-ending cycle of law reform.

Making new laws: Legislation

Democratic countries usually have what is called a "legislature" or "parliament," which has the power to make new laws or change old laws. In its political structure, Canada is a federation: a union of several provinces, with a central government. So, it has both a parliament in Ottawa to make laws for all of Canada, and a legislature in each province and territory to deal with local matters. Laws created at either level are called "statutes," "legislation" or "acts." When Parliament or a provincial legislature passes a statute, that statute takes the place of common law dealing with the same subject. In Quebec, much legislation exists to deal with specific problems not dealt with in the *Civil Code*.

Why is the process of making laws complicated? Why is this process important within a democracy?

Making laws through legislation can be a complicated process. Suppose, for example, the federal government wanted to create a law that would help control pollution. First, government ministers or senior public servants would be asked to examine the problem carefully and suggest ways in which, under federal jurisdiction, a law could deal with pollution. Next, a draft of the proposed law would be made. This text would then have to be approved by the Cabinet, which is composed of members of Parliament chosen by the Prime Minister. This version would then be presented to Parliament as a "bill," and would be studied and debated by members. Bills only become laws if they are approved by a majority in both the House of Commons and the Senate, and assented to by the Governor General in the name of the Queen.

A similar process is used in every province to make laws. Laws enacted by provincial legislatures are assented to by the Lieutenant-Governor.

Because of the complexity of modern society, more laws are made today than ever before. If our lawmakers had to deal with all details of all laws, the task would be nearly impossible. To solve this problem, Parliament and provincial legislatures often pass general laws delegating authority to make more specific laws called "regulations." Regulations serve to carry out the purposes of or expand on the general laws but are limited in scope by such laws.

Adapted from Canada Justice: http://www.canada.justice.gc.ca/en/dept/pub/just/CSJ_page7.html.

BACKGROUNDER

Roles and responsibilities in the justice system

The justice system

The justice system has many participants, including the police, community agencies, legal aid, the courts, lawyers, judges and victims' advocacy groups. All of them play an important role.

Alberta Minister of Justice and Attorney General

What roles and responsibilities of the provincial government does the Alberta Minister of Justice and Attorney General represent?

In Alberta, the provincial Minister of Justice is the senior law officer of the Crown. The Alberta Minister of Justice is also the Attorney General of the province. In a very broad sense, the Minister of Justice exercises administrative and ministerial functions while the Attorney General exercises legal functions. The Alberta Minister of Justice is responsible for proceedings under the *Criminal Code of Canada*, the *Young Offenders Act* (Canada) and provincial statutes. The Minister does not become involved in civil matters unless the government is a party to the action or if one of the parties is challenging legislation.

Although by legislation or tradition the Alberta Minister of Justice exercises a lengthy list of powers, these powers are limited and they are prescribed by law. For example, while the Minister has responsibility for the courts and prosecution in the province, he is unable to provide legal advice or intervene in private legal cases unless the constitutional validity of legislation is an issue.

As Attorney General, the Minister is required to exercise some functions under the *Criminal Code of Canada*, such as when the consent of the Attorney General is required for prosecution. Neither the Minister of Justice nor any other Cabinet minister may comment on cases before the court, so as to avoid even the suggestion of political interference in cases before the court.

Alberta Solicitor General

What roles and responsibilities of the provincial government does the Alberta Solicitor General represent?

The Alberta Solicitor General is responsible for ensuring safe communities through policing and crime prevention, victims' services and corrections. The *Police Act*, the *Corrections Act* and the *Victims of Crime Act* establish the roles and responsibilities of the Solicitor General in legislation.

The Minister is responsible for ensuring that victims of crime are treated with dignity and respect, and that they receive information and assistance during the police investigation and any criminal court proceedings that may result. The Solicitor General maintains effective and efficient provincial correctional programs for all offenders who receive sentences of less than two years. The Solicitor General is responsible for ensuring that offenders return to the community better able to positively contribute to society.

Federal Minister of Justice and Attorney General

What roles and responsibilities of the federal government does the federal Minister of Justice and Attorney General represent?

The Minister of Justice is also the Attorney General of Canada. The Minister is concerned with questions of policy and their relation to the justice system, while the Attorney General is the chief law officer of the Crown. The Federal Minister of Justice, working with the Department of Justice, helps to ensure that Canada's justice system is as fair, accessible and efficient as possible. The Minister helps the federal government to develop policy and to make and reform laws as needed.

In Alberta, the federal Minister of Justice is responsible for prosecution under federal laws other than the *Criminal Code of Canada* and the *Young Offenders Act*, and for civil proceedings under federal laws.

Federal Solicitor General

What roles and responsibilities of the federal government does the federal Solicitor General represent?

Alberta contracts with the federal Solicitor General to provide an RCMP provincial police service and some municipal police services. Alberta, along with Solicitor General Canada, provides for the establishment and funding of First Nations police services through tripartite policing agreements.

The federal Solicitor General is also responsible for offenders who receive prison sentences of two years or more. The federal National Parole Board has jurisdiction to grant parole for all offenders, whether they are sentenced to a federal penitentiary or Alberta provincial jails.

First Nations people

First Nations people in Alberta are members of Treaties 6, 7 and 8. Their historical and constitutional relationship with the government of Canada is unique.

Lawyers

What roles are important within the justice system? Describe the role of lawyers, judges, Crown prosecutors, police and non-government organizations.

In Alberta, approximately 6,500 lawyers are employed by corporations, governments, non-profit organizations or law reform, or are in private practice. Many lawyers are also elected municipal, provincial or federal representatives.

Lawyers are bound by a *Code of Ethics* that forms the benchmark against which a lawyer's behaviour is judged. A core value of the legal profession is the privilege that attaches to lawyer-client communications.

Judges

To ensure the rule of law, judges interpret legislation, develop the common law, determine the validity of laws, determine the facts, and render decisions in a fair and impartial manner. The rule of law is the cornerstone of a free and democratic society. Judges are protected from interference by the principle of "judicial independence." It is crucial to any legitimate democracy that the elected officials not be allowed to impose their political will on the courts' determination of guilt or innocence. For example, government ministers do not make public comment on a case which is before the courts so that there can be no suggestion that they are trying to influence the decision.

Crown prosecutors

Lawyers employed as Crown prosecutors for Alberta Justice are responsible for prosecutions under some federal statutes, such as the *Criminal Code*, and for prosecutions under provincial statutes. In a typical case, the prosecutor's responsibilities include determining appropriate charges, discussions with defence counsel, preparing witnesses for court, examination and cross-examination of witnesses, and presenting arguments respecting conviction and sentence.

The prosecutor's decisions are governed by the law, including the *Charter of Rights and Freedoms*, legal tradition, Alberta Justice policy and the Law Society's *Code of Conduct*, which applies to all Alberta lawyers.

Police

In Alberta, policing is provided by municipal police services, the RCMP and First Nation police services. Police services are responsible for protecting life and property, preventing and detecting crime, keeping the peace and enforcing laws within their jurisdiction. They fulfill these duties through law enforcement and a variety of community services, including: crime prevention, education programs, assisting in locating missing persons, dealing with lost property, traffic control, victim assistance and accident investigation. In addition to the uniformed members of the various police services, municipal police services and the RCMP have resources dedicated specifically to serious crime, drug enforcement, intelligence gathering, organized crime and forensic work. These dedicated resources support and enhance the level of service the police provide to the communities they serve.

In Alberta, municipal and First Nation police services and the RCMP have embraced the style of community-based policing. Community-based

policing addresses community concerns by allowing community input into policing decisions. It puts police officers in a more "visible" role, as close to the community as possible.

Non-government organizations

Non-government organizations provide a variety of services and activities in the community and at various stages of the justice system. They are governed by volunteer boards of directors and make extensive use of volunteers to deliver programs. Some may also engage in public education activities or speak out on social policy issues that relate to developing safe communities.

Victims

How does the justice system protect the rights of victims and the public?

Victims are persons who have suffered a loss or injury as a result of the wrongful act of another person.

The public

All members of the public have an interest in and are affected by the justice system. The public includes accused persons, witnesses, family or friends of victims or the accused, parties in a civil dispute and the community at large.

BACKGROUNDER

Roles and responsibilities of citizens

The citizen and the law

What are your roles and responsibilities as a citizen?

It is important to understand that every Canadian is part of the justice system, and that justice is not only the business of police, lawyers, judges and lawmakers. Individual citizens must play their part in the justice system if the law is to work and justice is to be done.

Jury duty

The jury is one of the oldest institutions of our criminal justice system. It entitles those who have been charged with a criminal offence to be tried by a group of citizens. In Canada, a jury is made up of 12 persons who have been selected from among citizens of the province or territory in which the court is located. The precise method of selecting citizens for jury duty is determined by the laws of the various provinces. Generally, the qualifications for jury duty are Canadian citizenship and age of majority.

What responsibilities do citizens have within the justice system?

A citizen who is called for jury duty is obliged to attend, unless excused by the laws of the province. Being called for jury duty does not necessarily mean that a person will be selected to serve as a juror; either the prosecutor or the defence counsel may object to the choice of a particular juror if they believe there is a reason why he or she should be disqualified.

Testifying in court

A person may be called to give evidence in a civil or criminal trial because he or she has information that either party in the case believes to be useful. For example, someone might have witnessed an offence, know something that is important to the case or possess a key document. A person may also be called as an "expert witness." An expert witness is a person whose knowledge about a particular subject can help the court obtain answers to technical questions. Testifying in court is essential to making Canada's justice system work.

Knowing the law

Individuals do not have to be experts in the law: that is the responsibility of lawyers. However, in our system of law, ignorance of the law is no defence. This means that persons charged with offences cannot be excused simply by claiming that they did not know they were breaking the law, although the court will consider honest mistakes of fact. Further, because our laws are publicly debated before being passed in Parliament or a provincial legislature, the public is expected to know what is permitted and what is not.

Knowing the law means that citizens should take reasonable steps to be sure they are acting legally. Information is available from federal and provincial government offices, public libraries and the police. However, if a person is still uncertain about the law, then a lawyer should be consulted.

Adapted from Canada Justice: http://www.canada.justice.gc.ca/en/dept/pub/just/CSJ_page33.html.

BACKGROUNDER

The court system

There are three branches of government – the legislative branch, the executive branch and the judiciary. The judiciary is an independent branch of government that presides over the courts.

Alberta courts

What responsibilities do the courts have within the justice system?

Three courts administer criminal law in Alberta: the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta and the Provincial Court of Alberta. Other courts that administer laws in Alberta include the Federal Court of Canada, Trial and Appeal Divisions. There are also a number of boards and tribunals in Alberta, and their decisions may be appealed to the courts. The federal government appoints judges to the Court of Appeal, the Court of Queen's Bench and the Federal Court. The provincial government appoints Provincial Court Judges.

The Court of Appeal hears appeals from the Court of Queen's bench, the Provincial Court and administrative tribunals. As well, the Court provides its opinion on questions referred by the Lieutenant-Governor under the *Judicature Act*.

The Court of Queen's Bench is the superior trial court for the province, hearing trials in civil and criminal matters as well as appeals from the decisions of the Provincial Court. The Chief Justice and other Justices of the Court of Queen's Bench are also judges of Surrogate Matters, which has jurisdiction over probate and administration of estate matters.

The Provincial Court of Alberta has five different functions: civil, criminal, family, traffic and youth. Each court hears proceedings, applications and trials in their respective area of law, subject to any statutory limitations.

Provincial Court of Alberta

- Civil - Civil Court hears all civil claims, subject to Provincial Statuary restrictions. The Court is limited to claims of $7,500 or less, subject to some restrictions.
- Criminal - Criminal Court handles first appearances, entry of pleas, bail hearings, preliminary inquiries, and the trials and sentencing of summary convictions and certain indictable offences.
- Family - Family Court hears maintenance applications regarding spousal and child maintenance proceedings and custody access claims, when divorce is not an issue. In addition, this court hears all Child Welfare and Private Guardianship applications.
- Traffic - Traffic Court hears proceedings under the *Provincial Highway Traffic Act* and the *Motor Vehicle Administration Act*.
- Youth - Youth Court hears all proceedings under the provincial and federal *Young Offenders Act* applying to youth between the ages of 12 to 17 years of age inclusive.

The Federal Court of Canada

The Federal Court of Canada handles matters relating to intellectual property; civil litigation involving First Nations, Metis and Inuit; federal Crown litigation; federal Crown judicial reviews; and Maritime legislation.

Alternatives to court

Alternative Measures Programs (adult and young offender) are used as an alternative to court proceedings for people who are alleged to have committed minor offences. The goals of these programs are to prevent the individual from obtaining a criminal record, prevent future criminal behaviour, promote community involvement and foster community awareness through participation. On average in 2000-01, 814 adults and 859 young offenders were supervised in the Alternative Measures Program each month.

BACKGROUNDER

Constitutional justice and the *Charter of Rights and Freedoms*

Why is the constitution important to Canada's democracy?

A constitution is a nation's "law of laws." Canada was created by a constitutional law. The *British North America Act, 1867*, passed by the British Parliament in 1867, joined Quebec, Ontario, New Brunswick and Nova Scotia into a Dominion of Canada. The *British North America Act, 1867*, was the result of negotiations among delegates from all four territories who had gathered at a series of three conferences, the most famous of which was the Charlottetown meeting in 1864. The delegates of these conferences became known as the Fathers of Confederation. They were also the authors of Canada's basic constitutional law.

Canadian Constitution

The Constitution establishes the various powers of government and divides them between the federal and provincial governments. The Constitution also establishes limits on the powers of government and establishes the fundamental rights and freedoms of Canadians.

Roles and responsibilities

What are the roles of governments within the Constitution?

The federal parliament and government has responsibilities such as:

- Enacting and administering criminal law
- Enacting divorce law
- Appointing superior court judges
- Taking responsiblity for Aboriginal peoples and lands reserved for Aboriginal peoples.

The judiciary has responsibility to:

- Interpret and uphold the laws
- Determine facts
- Render decisions.

The provincial legislature and government has responsibilities such as:

- Administering criminal justice within the province
- Administering property and civil law
- Appointing provincial court judges
- Maintaining a unique relationship with Metis people.

Extracted from the Alberta Justice website "Public Consultation Guide," 1999, and the Alberta Justice website sections "Overview of the Justice System" and "Roles and Responsibilities."

BACKGROUNDER

Aboriginal justice

First Nations and Metis people

The *Constitution Act* of 1982 defines "Aboriginal people" as Indian, Metis and Inuit people. Aboriginal people now identify themselves as First Nations people who have a special relationship with the federal government by virtue of the Treaties.

Metis people have a different basis for their relationship with the federal government and consequently with the provincial government. These relationships are in a continual process of evolution and definition, often involving landmark decisions and rulings of the courts.

What issues are First Nation people trying to resolve through the courts?

Justice for First Nations and Metis people is a concept that embodies aspects other than just the criminal justice system and the involvement of Aboriginal people in that system. Such aspects include, for example, First Nations people seeking, through the courts, resolution of issues arising from Treaty rights, land claims and environmental concerns.

Aboriginal peoples have their own interpretations of how they would like to negotiate and implement their inherent right to Aboriginal self-government. Currently, there are a number of Aboriginal self-government agreements throughout Canada and there is no single model of Aboriginal self-government apparent in all such agreements.

Justice on Trial: Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta (1991) noted: ". . .the impact of the criminal justice system on Aboriginal people can be measured by the disproportionate number of people in our correctional institutions. Aboriginal people are often on the receiving end of what appears to be a foreign system of justice delivered, in large measure, by non-Aboriginals."

The most often cited reason for the overrepresentation of Aboriginal people in the justice system is that the western justice system is incompatible with traditional Aboriginal peacemaking processes. The role of sentencing circles is important to this perspective because sentencing circles are seen as one way to redress this imbalance. Sentencing circles reflect the more traditional Aboriginal processes.

The failure of the justice system to meet the needs of Aboriginal peoples has been identified by various studies across Canada, most recently by the *Report of the Royal Commission on Aboriginal Peoples*. Aboriginal issues have placed, and continue to place, unique demands on the Canadian justice system.

BACKGROUNDER

Criminal justice

The *Criminal Code of Canada*

In 1892, Canada's Parliament unveiled the first homemade statement of the criminal law, the *Criminal Code of Canada*. The *Criminal Code* is the legislation that sets out the crimes, defences, principles and procedures that are used by the courts in dispensing justice. In 1955, a provision was added to the *Code* to make it the exclusive source of criminal offences. Until then, common-law offences were recognized by the law but not actually written in legislation, for example, contempt of court and conspiracy.

Of course, not all offences are contained in the *Criminal Code*. There are hundreds of federal statutes, and most (if not all) of them make it an offence to do one thing or another. The *Income Tax Act* makes it an offence not to pay taxes, the *Aeronautics Act* makes it an offence to operate an airplane without a license and so on. But the criminal law is different. There is a stigma attached to being convicted of a "crime."

"Crimes involve moral culpability." What does this mean?

Crimes involve moral culpability. They are acts or omissions that our society has prohibited because they are "wrong." Offences from other *Acts*, like tax evasion, may have just as serious consequences in terms of sentencing, but they do not produce a criminal record.

Why is the presumption of innocence important in a democratic system?

Perhaps the most important principle of our criminal justice system is the presumption of innocence. The prosecution must prove that the accused committed the offence that he or she is charged with beyond a reasonable doubt. The burden of truth is on the prosecution at the beginning of the trial and continues until the end.

The Supreme Court of Canada has recently commented on reasonable doubt and the presumption of innocence, saying, "The two concepts are forever linked and they must be presented together as a unit." The court made some specific observations in defining these principles:

- A reasonable doubt is a doubt based on reason and common sense. It must be logically based upon the evidence or lack of evidence.
- A reasonable doubt cannot be based on sympathy or prejudice.
- A judge or jury must realize that the prosecution is not required to prove its case to an absolute certainty. Such an unrealistically high standard could seldom be achieved. The test is not proof beyond any doubt.

What do you know about the Supreme Court of Canada? How do courts protect rights?

BACKGROUNDER

Civil and family justice

What is the difference between civil and criminal law?

A civil action is any legal action that is not a criminal action. Civil actions are between private individuals, whereas criminal actions are between the state and the accused. Examples of civil actions include:

- Claims for debt
- Damages arising from motor vehicle accidents
- Divorces
- Adoptions
- Matrimonial property actions
- Foreclosures
- Administration of estates following a death.

How are judges important to the civil and family law process?

What do you know about common law?

The persons involved in a civil action are called "the parties." Civil actions are heard in courts, like criminal acts. Many of the people involved are the same as those involved in the criminal judicial process. Judges have an important role in the civil and family justice system. They interpret legislation, develop the common law, determine the validity of laws, determine the facts and render decisions in a fair and impartial manner, thereby ensuring the rule of law, which is the cornerstone of a free and democratic society. They do this work in relation to both criminal and civil law. A lawyer may represent a person in a civil matter or act as defence counsel or prosecutor in a criminal matter.

To be sued or to sue someone is a civil action. There are three stages in most civil actions:

- The filing and serving (physical delivery of documents to the opposing party) of the pleadings
- The discovery process
- The trial process.

Two of the most common general types of civil claims pursued in Alberta courts are tort claims and contract claims.

Family law covers the unique legal rights and obligations that arise between family members. Family relationships are not just legal relationships; they also have emotional and social aspects. When there are family law issues, there are often psychological or other issues that need to be dealt with. For this reason, the justice system encourages people to deal with family issues in a holistic way, other than just by using the formal court process. Family law includes a number of important aspects that can affect both youth and adults.

BACKGROUNDER

Youth justice

Youth justice

Why do we need a separate criminal justice system for youth?

Children aged 12 to 18 who break the law share distinctive and common traits that make them different from adult offenders. Generally speaking, young people are greater risk-takers and they have less ability to think about the long-term consequences of their actions. As a group, they are highly susceptible to negative peer influences. Finally, there is evidence that people in this age group, particularly those under 14, are more willing to admit blame when accused and to waive their rights, even when they are given the same type of warnings and assistance that are given to adults who are accused.

All of these characteristics that differentiate youths from adults justify a different court system with judges and court officials who are aware of these differences. They also justify special rules governing the evidence that can be used in prosecuting youth who break the law and specific dispositions, or sentences, for those who are convicted.

In 1984, the federal *Young Offenders Act* was proclaimed, replacing the *Juvenile Delinquents Act*. The *Juvenile Delinquents Act* was a social welfare response to youth crime. It dealt with neglected youth as well as those who committed criminal acts. Judges were given wide powers. In many ways the courts were placed in the role of kindly parent. Proceedings were held in private, within a system separate from the adult courts.

The *Young Offenders Act* significantly changed the way that society deals with young people. It was intended to strike a balance between the rights and responsibilities of the young person and the rights of the community. The Act applied to youth aged 12 to 17.

What is the new *Youth Criminal Justice Act* intended to do?

The *Young Offenders Act* has now been replaced with the *Youth Criminal Justice Act* which will be proclaimed into effect in 2003. The *Youth Criminal Justice Act* has more than twice as many sections as the *Young Offenders Act*. It is intended to promote the use of alternatives to the traditional justice system while at the same time strengthening the force of law on the most serious offenders.

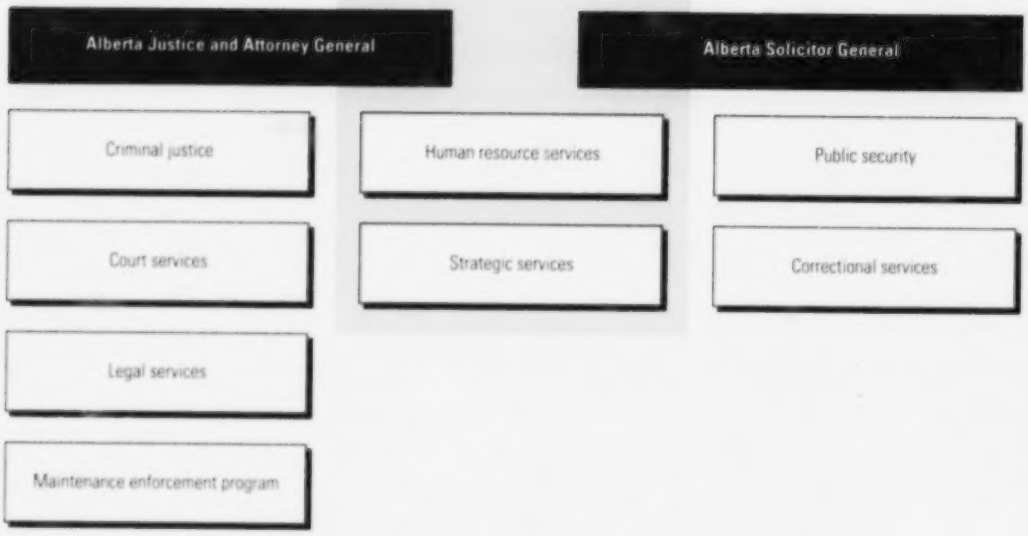
Introduction to the justice system

Charts and visual organizers

The charts and visual organizers can be used to reinforce, enrich and extend the content provided in the backgrounders.

PROCESS FLOWCHART

Roles and responsibilities



VSUAL ORGANIZER

Compare-contrast map

How are the roles and responsibilities of the federal and provincial governments similar?

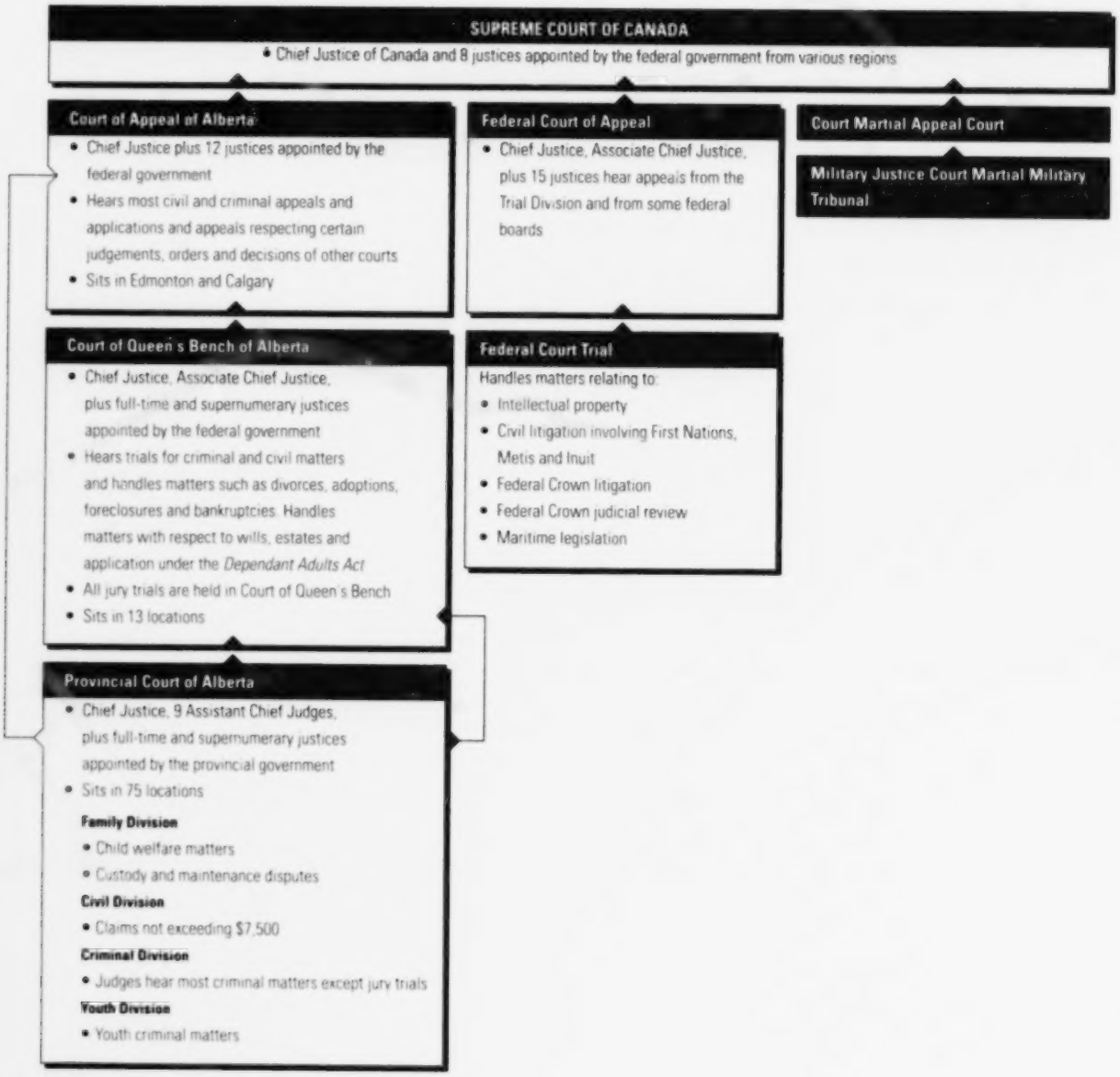
Federal	Provincial

How do the roles and responsibilities of the federal and provincial governments differ?

Federal	Provincial

PROCESS FLOWCHART

The court system


SUPREME COURT OF CANADA
• Chief Justice of Canada and 8 justices appointed by the federal government from various regions
Court of Appeal of Alberta
• Chief Justice plus 12 justices appointed by the federal government
• Hears most civil and criminal appeals and applications and appeals respecting certain judgements, orders and decisions of other courts
• Sits in Edmonton and Calgary
Federal Court of Appeal
• Chief Justice, Associate Chief Justice, plus 15 justices hear appeals from the Trial Division and from some federal boards
Court Martial Appeal Court
Military Justice Court Martial Military Tribunal
Court of Queen's Bench of Alberta
• Chief Justice, Associate Chief Justice, plus full-time and supernumerary justices appointed by the federal government
• Hears trials for criminal and civil matters and handles matters such as divorces, adoptions, foreclosures and bankruptcies. Handles matters with respect to wills, estates and application under the Dependant Adults Act
• All jury trials are held in Court of Queen's Bench
• Sits in 13 locations
Federal Court Trial
Handles matters relating to:
• Intellectual property
• Civil litigation involving First Nations, Metis and Inuit
• Federal Crown litigation
• Federal Crown judicial review
• Maritime legislation
Provincial Court of Alberta
• Chief Justice, 9 Assistant Chief Judges, plus full-time and supernumerary justices appointed by the provincial government
• Sits in 75 locations
Family Division
• Child welfare matters
• Custody and maintenance disputes
Civil Division
• Claims not exceeding $7,500
Criminal Division
• Judges hear most criminal matters except jury trials
Youth Division
• Youth criminal matters
Commissioner
Handles Provincial Offences Procedure Act matters, such as highway traffic offences

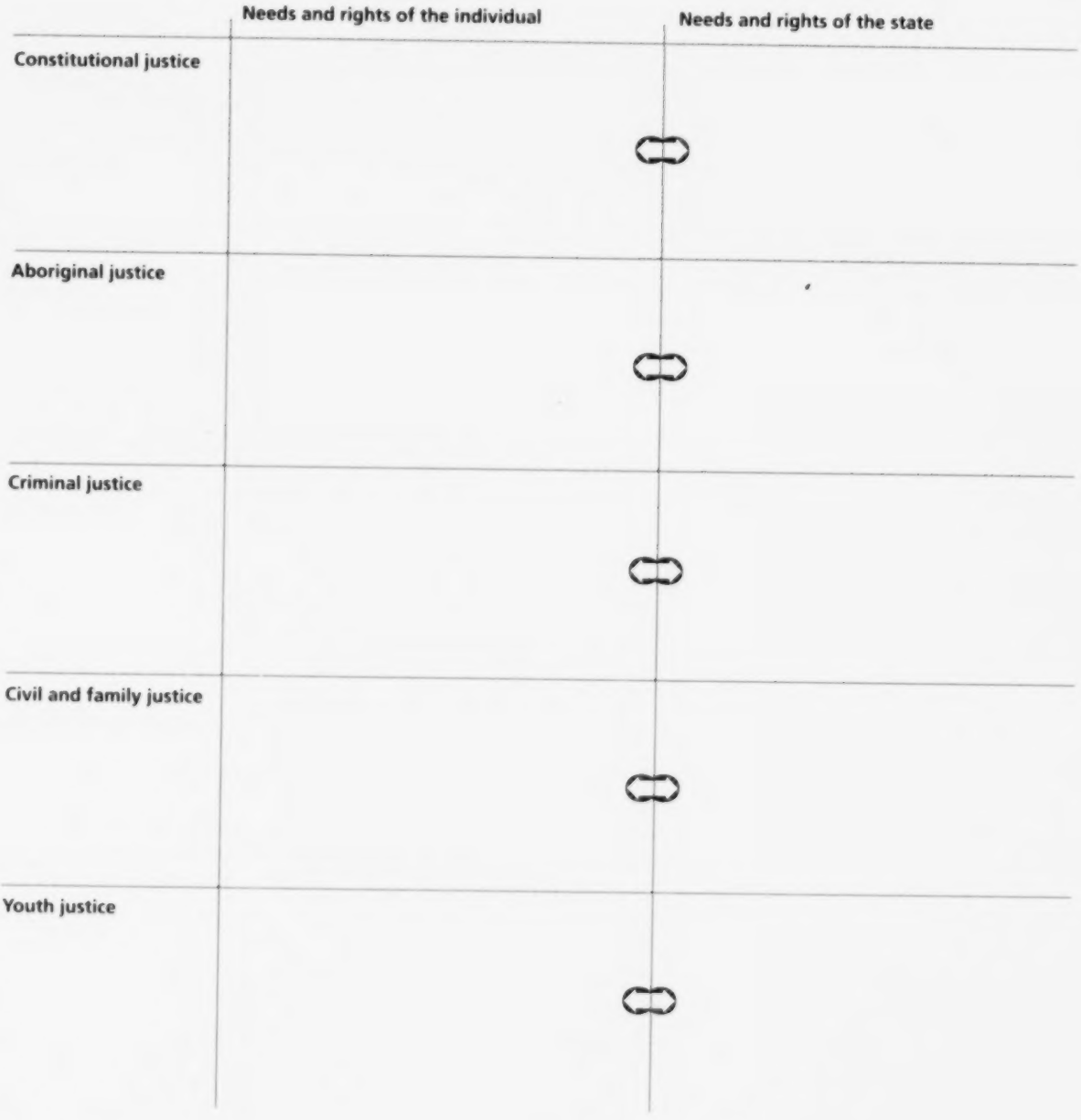
NOTE: *Decisions of lower courts may be appealed to higher courts. Arrows show routes for appeals.*

VISUAL ORGANIZER

Comparison flowchart

How do different aspects of the judicial system balance the needs and rights of the individual with the needs and rights of the state?

In the first box, provide an example of how constitutional, Aboriginal, criminal, civil/family and youth justice systems protect the needs and rights of individuals. Provide an example of how each justice system protects the needs and rights of society in the second box.



2 Constitutional justice and the *Charter of Rights and Freedoms*

This thematic section can be used to teach generalizations and concepts related to the rights and responsibilities of citizens under the Canadian constitution. It can be used to examine the *Charter of Rights and Freedoms* in relation to the protection of the rights of individuals, both in dealing with the law and in the area of human rights under provincial and federal law.

CURRICULAR OVERVIEW

Constitutional justice and the *Charter of Rights and Freedoms*

The following outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada can be met through the constitutional justice thematic section.

Critical and creative thinking outcomes

This thematic section encourages the development of the following critical and creative thinking skills.

Students should acquire the knowledge and skills necessary to:

- Examine the process whereby decisions affecting themselves and society are made
- Design and evaluate alternative methods of providing for the protection of human rights in society
- Examine how questions that involve the needs of the individual and the needs of the state are resolved.

Inquiry issues and questions

This thematic section supports the use of issues and questions for inquiry from the Alberta Social Studies 10 Program of Studies.

- To what extent should Canada pursue a leadership role in working for the protection of human rights?
- How can citizens influence decision making by governments in Canada?
- What responsibilities does the individual have in Canadian society?
- How are human rights protected in Canada?

Knowledge outcomes

This thematic section develops generalizations, key understandings, concepts and related facts from the Alberta Social Studies 10 Program of Studies.

Theme I: Politics and government

Politics are a feature of everyday life

- Decision making

  Identify examples of consensus, majority rule, influence, negotiation and compromise at school, community, provincial and national levels (laws, services, etc.).

The structure and functions of government in Canada are important

- Democracy
- Federalism
- Constitution

Examine parliamentary democracy in Canada, including the following:

- Constitution (*Constitution Act, 1867* – formerly known as the *British North America Act, 1867*; the *Constitution Act, 1982*)
- Division of powers

  Functions of government (executive function; legislative function; judicial function)
- Parliamentary system

  Role of the Supreme Court.

Theme II: Citizen participation

The citizen has a role in the political process

- Participation

Briefly examine citizens' participation in the political process:

- Lobbying
- Demonstrating.

Political differences are resolved through a variety of approaches .

- Democratic process
- Majority and minority rights
- Negotiation and compromise

Identify ways of resolving differences:

- Legal actions.

Theme III: Rights and responsibilities

Rights and responsibilities are associated with citizenship

- Rights

  Examine rights (individual and collective) in Canadian society (human, civil, legal, minority, economic, cultural, language, political)
- Freedoms
- Justice
- Equality
- Responsibilities

  Examine responsibilities in Canadian society:
  - Political (franchise)
  - Legal (jury duty)
  - Moral (respect for the rights of others).

There are basic human rights that need to be protected

- Human rights
- Discrimination.

There are various means that help to protect and preserve rights in Canada

- Entrenchment of rights
- Safeguarding rights

  Explain how the following help to protect human rights:
  - *Canadian Charter of Rights and Freedoms*, 1982
  - *Alberta Human Rights, Citizenship and Multicultural Act*, 1996
  - Human rights commissions
  - Courts.

2 Constitutional justice and the *Charter of Rights and Freedoms*

Focus questions and activities

In this thematic section, there are three focus questions and a variety of learning activities. The focus questions and activities in the constitutional justice thematic section are designed to:

- Organize the information in this thematic section around the three themes in the Alberta Social Studies 10 Program of Studies Topic B
- Involve students in critical and creative thinking activities
- Establish questions and issues for inquiry.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: Constitutional justice and the *Charter of Rights and Freedoms*
- Backgrounder: The division of powers and the Constitution
- Websites

The Alberta Justice website at www4.gov.ab.ca/just provides information on different aspects of constitutional justice, including the role of the federal and provincial governments.

For information on the roles and responsibilities of different levels of government as defined by the Constitution, go to www.law-faqs.org/nat/cons.htm.

For information on the enactments (additions or changes) found in the *Constitution Act, 1982,* go to http://canada.justice.gc.ca/loireg/rapport/en/index_en.html.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How does the government function through the Constitution?

The division of powers

Have students work in small groups to identify the responsibilities of the federal and provincial governments as outlined by the Constitution and the *Charter of Rights and Freedoms*. Ask students to find examples of federal and provincial responsibilities in other sources, such as the media, classroom textbooks or resources, and the Internet.

The evolution of the Canadian Constitution

Ask students to research the evolution of the Canadian Constitution since 1867 using additional print and Internet sources that outline enactments (additions or changes) to the Constitution. Have students construct a timeline of the evolution of the Constitution, and highlight and explain the changes that have had the most impact.

Values underlying constitutional law

Have students work in small groups to identify the basic values that underlie the Constitution and the *Charter of Rights and Freedoms*. Ask each group to discuss each value in the context of:

- Moral rights and responsibilities
- Individual versus collective rights and responsibilities.

Issue paper

Should federal and/or provincial government responsibilities be changed? Have students write an issue paper that outlines and defends a personal position on what the responsibilities of each level of government should be. Have them consider these questions:

- What are the differences in the responsibilities of federal and provincial governments?
- Do either the federal or provincial governments have too much power?

Teacher preparation

These student and teacher resources support the activities below.

- Summary: Constitutional justice and the *Charter of Rights and Freedoms*
- Backgrounder: The division of powers and the Constitution
- Backgrounder: Frequently asked questions about the *Charter of Rights and Freedoms*
- Backgrounder: The *Charter of Rights and Freedoms* and Canadian and Alberta human rights Law
- Visual organizer: Spheres of influence chart
- Websites

Several websites offer information on constitutional justice and human rights. Information on a variety of human rights topics in Alberta is available on the Alberta Human Rights Commission website at www.albertahumanrights.ab.ca/.

For information on the effects of the *Charter of Rights and Freedoms* on different aspects of the justice system, go to www.law-faqs.org/nat/char.htm.

The website of the Centre for Constitutional Studies at www.law.ualberta.ca/centres/ccs/resource.html#cotw provides a variety of links to sites related to constitutional law and human rights. The section of this site called "Constitutions of the World" links to information on the constitutions of other countries.

The *Universal Declaration of Human Rights* is available at www.un.org/Overview/rights.html.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What rights and responsibilities does the individual have in Canadian society?

Role play

Do rights always come with responsibilities? Have students work in small groups to develop a role-play scenario that identifies a right and an accompanying responsibility of Canadian citizens. Ask students to review the rights outlined in the *Charter of Rights and Freedoms* and develop their scenario around an example that illustrates a right and responsibility from one of the sections of the *Charter*. Ask students to consider the following responsibilities within the context of rights outlined in the *Charter*:

- Political
- Legal
- Moral
- Social.

Have groups present their role-play scenarios to other groups or to the entire class.

Functions of government

Have students review what they have learned about functions of government. Ask them to complete a concept map that identifies and describes how the rights of the individual are affected by the three different functions of government:

- Executive function
- Legislative function
- Judicial function.

Spheres of influence chart

Ask students to complete a spheres of influence chart that describes how the Constitution and the *Charter of Rights and Freedoms* affect Canadian citizens at different levels:

- Personal
- Community
- Municipal
- National
- Federal
- Global or international.

Think pair share

Have each student write a description of the role of a citizen in a democracy and share the descriptions with a partner. Ask each pair of students to discuss any differences in their understanding of the role a democratic citizen should play. Then ask each pair to share key points of their discussion with the class. Discuss definitions of the words "citizen" and "democracy."

The protection of human rights

Have students develop a written personal response to human rights legislation, including the *Canadian Human Rights Act* and the *Alberta Human Rights, Citizenship and Multicultural Act*. Ask students to use these questions as a guide:

- What is the function and purpose of the Alberta Human Rights and Citizenship Commission and the Canadian Human Rights Commission?
- How does human rights legislation affect you personally?
- What would you identify as possible sources of controversy in human rights legislation, both federally and provincially?
- Should the constitution provide the ultimate standard for rights and freedoms, or should governments have the ability to alter rights and freedoms depending on circumstances?
- Is there a conflict between individual rights and group rights?
- Should rights be given to some if it means taking rights away from others?

Making comparisons

Ask students, individually or in small groups, to research human rights legislation in other provinces or territories, using classroom resources and textbooks, library sources or the Internet to conduct their research. Have students compare human rights legislation in Alberta to that of another province or territory.

Alternatively, ask students to research the constitutions and related documents of other countries that ensure rights and outline the responsibilities of citizens. Have students compare the constitution of another country to Canada's constitution, using classroom resources and textbooks, library sources or the Internet to conduct their research.

Have students analyze the extent to which provinces or other countries protect and preserve rights through:

- Entrenchment of rights
- Safeguarding of rights.

Have students share their research. Ask students to extend their research by comparing the constitutions they have researched to the *Universal Declaration of Human Rights*.

Teacher preparation

These student and teacher resources support the activities below.

- **Summary: Constitutional justice and the *Charter of Rights and Freedoms***
- **Backgrounder: The sections of the *Charter of Rights and Freedoms***
- **Handout: Six constitutional cases**
- **Handout: Decisions on the six constitutional cases**
- **Websites**

Several websites provide information on changes and challenges to constitutional law.

For information on "references" to the Constitution, go to http://canada.justice.gc.ca/en/ps/const/bck1.html.

For information on the Quebec secession issue, go to http://canada.justice.gc.ca/en/ps/const/boston.html.

For links to more detailed information sources on the Quebec secession issue, go to http://canada.justice.gc.ca/en/ps/const/ref.html.

For descriptions of cases based on human rights issues and challenges to the law on the basis of the *Charter of Rights and Freedoms*, go to www.canada.justice.gc.ca/en/justice2000/home.html. These cases are divided into four time periods: 1900-1924, 1925-1949, 1950-1974 and 1975-2000.

For a list and description of constitutional and human rights cases and decisions, go to www.cdn-hr-reporter.ca/casename.htm.

For lists and descriptions of constitutional and human rights cases by topic, go to www.cdn-hr-reporter.ca/topics.htm.

The website of the Centre for Constitutional Studies at www.law.ualberta.ca/centres/ccs/resource.html#cotw provides a variety of links to sites related to constitutional law and human rights. Sections of this site include judicial decisions at the federal and provincial levels, and Aboriginal rights and constitutional justice issues relating to the United States and the world, including the International Court of Justice.

- **Assessment**

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How can constitutional law be changed or challenged?

Carousel

Ask students to work in small groups to develop a poster that summarizes one section of the *Charter of Rights and Freedoms*. Ask them to visually illustrate the rights that are protected by the section they have chosen. Have each group brainstorm questions and issues that may be associated with this section of the *Charter* and include them on their poster.

Have groups view the posters created by other groups using a carousel format:

- Place the poster and a blank comment sheet at each group's working area.
- Rotate groups around the room in five-minute intervals.
- Ask groups to review the questions and issues related to the section of the *Charter* that are illustrated on each poster.
- Have each group add their own question and issues on the comment sheet.

A students' court

Work with the class to set up and conduct a students' court on a constitutional or human rights issue. Students can select issues from other areas of the judicial system:

- Aboriginal justice
- Criminal justice
- Civil and family justice
- Youth justice.

Have students work in small groups to develop a scenario based on a description of an actual case. The scenario should be written to include details about:

- The facts of the case
- Who is involved
- The issues involved.

The students' court format can be organized much like a debate. However, there is an additional role: a panel of students listens to the opposing viewpoints and makes a judgment on the issue, as a judge would in a court. The students' panel can be asked to confer about their final judgment in front of the class.

To conduct the students' court process, have students take on the following roles:

- A students' panel (a group of students who will listen to the facts of the issue and make a judgment)
- A group that presents one side of the issue
- A group that presents another side of the issue.

Media search

Ask students to individually look for examples of articles in the media that relate to the rights in the *Charter of Rights and Freedoms*. Have students focus on the following questions:

- Which section of the *Charter of Rights and Freedoms* does the article refer to?
- Did the outcome reflect the spirit and the law of that section?
- Does the *Charter of Rights and Freedoms* adequately protect the rights of the individual involved?

Have each student work with a partner to construct a poster that includes:

- A statement that answers the questions listed above
- A short essay on the extent to which individual rights are protected by the *Charter of Rights and Freedoms*
- Examples from media articles that illustrate and support their position.

Guest speakers

Work with students to develop a list of speakers to invite into the classroom to provide additional information or perspectives on issues and topics relating to constitutional law and human rights. Have each student work with a partner to research contact information for the speakers and develop an invitation to speak to the class that includes:

- The purpose of the request
- The topics or issues being studied
- The information students are interested in.

Work with students to contact a potential speaker and present the invitation.

Constitutional justice and the *Charter of Rights and Freedoms*

Summary, backgrounders and glossary

The summary, backgrounders and glossary provide information about constitutional justice and the *Charter of Rights and Freedoms* and can be used in a variety of ways:

- The summary of key content provides a synthesis and advance organizer for the information in the thematic section. The summaries can be used as an introduction to the section, a review of key content or an overview of the theme for class or group activities.
- The backgrounders provide information on different aspects of the judicial system. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study and critical thinking development.
- The glossary lists key terms and definitions. These terms appear in bold type throughout the summary and backgrounders.

SUMMARY

Constitutional justice and the *Charter of Rights and Freedoms*

The division of powers and the Constitution

The Constitution

- A constitution is a nation's "law of laws."
- Canada was created by a constitutional law.
- The *British North America Act*, passed by the British Parliament in 1867 and now called the *Constitution Act, 1867*, joined Quebec, Ontario, New Brunswick and Nova Scotia into a Dominion of Canada.

Division of powers

The *Constitution Act, 1867*, divided law-making powers between the federal and provincial governments. Some examples of this division of powers follow.

Some powers of the federal government include:

- Responsibility for peace, order and good government
- Laws in all areas not specifically given to provinces in the *Constitution Act, 1867*, regulation of trade and commerce, unemployment insurance, taxation, postal service, census and statistics, marriage and divorce, and criminal law, including penitentiaries.

Some powers of provincial governments include:

- Taxation for provincial purposes
- Hospitals
- Municipalities
- Property and civil rights.

The Charter of Rights and Freedoms

- The *Charter of Rights and Freedoms* applies to all Canadian provincial and federal laws.
- The *Charter* is the most important law in Canada.

Rights and freedoms that are protected by the *Charter* include:

- Freedom of conscience and of religion
- Freedom of thought, belief, opinion and expression, including **freedom of the press**
- The right to life, liberty and the security of the person
- The right to be secure against unreasonable search and seizure
- The right not to be arbitrarily detained
- The right of persons charged with a crime to be tried within a reasonable time, to not be **compellable** as a witness against themselves and to be **presumed innocent** until proven guilty
- The right not to be subjected to cruel and unusual punishment
- The right to equal protection of the law without distinction based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

  Some of the above rights or freedoms are subject to limits either imposed in the *Charter* or in subsequent **court decisions.**

The most important of these limitations is Section 1 of the *Charter*, which authorizes laws that might violate a *Charter* right or freedom, provided that the violation "can be demonstrably justified in a free and democratic society." The rights and freedoms contained in the *Charter* are given a generous or broad interpretation by the courts.

Frequently asked questions about the *Charter of Rights and Freedoms*

Q: Why is it important that the Charter *is part of the Constitution?*

A: The Constitution is the supreme law of Canada. Section 1 of the *Charter* says that other laws may limit the rights and freedoms in the *Charter* so long as those laws are reasonable and justified in a free and democratic society.

Q: How long has the Charter *been in force?*

A: The *Charter* came into effect on April 17, 1982. It was part of a package of reforms contained in a law called the *Constitution Act, 1982*. One section of the *Charter*, Section 15, came into effect only on April 17, 1985, three years after the rest of the *Charter*. This delay gave governments time to bring their laws into line with the equality rights in Section 15.

Q: Are all of my rights contained in the Charter*?*

A: No. The *Charter* contains the rights and freedoms that Canadians believe are essential in a free and democratic country. These rights and freedoms have been set out in the Constitution as a way of making sure that they are given the greatest protection possible under the law. Section 26 of the *Charter* essentially states that the guarantee of *Charter* rights is not to be taken as denying the existence of any other rights and freedoms that exist in Canada.

Q: Who enjoys Charter *rights?*

A: Generally speaking, any person in Canada, whether a Canadian citizen, a permanent resident or a newcomer, has the rights and freedoms contained in the *Charter*.

Q: Can the government take away my Charter *rights?*

A: Section 1 of the *Charter* says that governments may limit *Charter* rights so long as those limits are ones that a free and democratic society would accept as reasonable. It is also possible for governments to pass laws that take away some rights under the *Charter*. Under Section 33 of the *Charter*, sometimes called the "notwithstanding clause," governments can override a specific right by a law that declares the right is not to exist. A declaration will cease to have effect within five years of the time it is enacted.

Q: What can I do if my Charter *rights have been denied?*

A: The *Charter* provides for three kinds of actions by persons whose rights have been denied. These actions are referred to as legal "remedies."

The *Charter of Rights and Freedoms* and Canadian and Alberta human rights law

The entrenchment of human rights

- The 1982 Canadian *Charter of Rights and Freedoms* guarantees certain rights and freedoms to all Canadians.
- These rights and freedoms are **entrenched**, meaning that they cannot be changed except by use of amending procedures.
- Government actions must be consistent with the *Charter* because the *Charter* applies to the Parliament and government of Canada and to the legislature and government of each province and territory.
- In addition to the *Charter*, all provinces and territories have human rights legislation designed to protect individual rights and freedoms.
- The difference between the *Charter* and human rights laws is that the *Charter* applies to government actions while human rights laws apply to non-government actions.

The *Canadian Human Rights Act*

- The *Canadian Human Rights Act* protects the equality rights of Canadians on a federal level.
- The Alberta Human Rights and Citizenship Commission and the Canadian Human Rights Commission are of equal stature, but they administer their legislation separately.

The *Alberta Human Rights, Citizenship and Multiculturalism Act*

- To safeguard the equality rights of Albertans, the *Alberta Human Rights, Citizenship and Multiculturalism Act* prohibits discrimination in a number of areas.
- The *Act* prohibits discrimination on the grounds of race, colour, ancestry, place of origin, religious beliefs, gender (includes sexual harassment, pregnancy and equal pay for same or similar work), physical or mental disabilities, age, marital status, family status and source of income, and sexual orientation.

The sections of the *Charter of Rights and Freedoms*

Section 1

Guarantee of rights and freedoms

- The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 2

Fundamental freedoms

Everyone has the following fundamental freedoms:

- Freedom of conscience and religion
- Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
- Freedom of peaceful assembly
- Freedom of **association.**

Section 3

Democratic rights

- Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Section 4

- No House of Commons and no legislative assembly shall continue for longer than five years.

Section 5

- There shall be a sitting of Parliament and of each legislature at least once every 12 months.

Section 6

Mobility rights

- Every citizen of Canada has the right to enter, remain in and leave Canada.
- This section protects the right of Canadians to move from place to place.

Legal rights

Sections 7 to 14 set out rights that protect us in our dealings with the justice system. They ensure that individuals who are involved in legal proceedings are treated fairly, especially those charged with a criminal offence. It also extends to other offences, in circumstances where those convicted are liable to imprisonment as a penalty.

Section 7

- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 8

- Everyone has the right to be secure against unreasonable search or seizure.

Section 9

- Everyone has the right not to be arbitrarily detained or imprisoned.

Section 10

- Everyone has certain rights on arrest or detention.
- Section 10 ensures that people under arrest have a chance to challenge the lawfulness of their arrest.

Section 11

Section 11 sets out several important rules that protect anyone charged with an offence under federal or provincial law, including:

- Persons accused of a crime must be told promptly what offence they are charged with.
- Their trials must take place within a reasonable time.
- Anyone accused of breaking the law is presumed to be innocent until proven guilty.

Section 12

- Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.
- Governments cannot treat individuals or punish them in an excessively harsh manner.

Section 15

Equality rights

- Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on grounds that include race, national or ethnic origin, colour, religion, gender, age, or mental or physical disability.
- These listed grounds of discrimination (i.e., race, sex, age) are examples of prohibited grounds of discrimination. Section 15 prevents the government from discriminating on the basis of a listed ground or any other similar ground (e.g., sexual orientation).
- Section 15 does not prevent the government from drawing distinctions on the basis of these grounds. Section 15 simply prevents discriminatory distinctions.
- Distinctions drawn on the basis of actual characteristics are generally not discriminatory. For example, because there are actual differences between children and adults, the government is entitled to draw distinctions on the basis of the age of majority for gaming and liquor laws.
- Discrimination arises when distinctions are drawn on the basis of presumed or stereotypical characteristics, for example, a distinction drawn on the basis of race, without regard to individual abilities.
- Discrimination can also arise when the government fails to accommodate the actual characteristics of a particular group. For example, failure to provide sign language interpretation where it is necessary for effective communication denies deaf individuals the equal benefit of the law and discriminates against them in comparison to hearing persons. Governments are required, pursuant to Section 15 of the *Charter*, to take special measures to ensure that disadvantaged groups are able to benefit equally from government services.

Section 23

Minority language educational rights

This section of the *Charter* requires provincial governments to provide education to Canadians in the official language of their choice, even in areas where a minority of residents speak that language.

Section 24

Enforcement

- Anyone whose rights or freedoms, as guaranteed by the *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
- That person then must show that a *Charter* right or freedom has been violated.
- In criminal cases, a court may make an order stopping or delaying the trial of a person whose rights have been denied.

BACKGROUNDER

The division of powers and the Constitution

The Constitution

Find out more about the *British North America Act, 1867*.

A constitution is a nation's "law of laws." Canada was created by a constitutional law. The *British North America Act, 1867*, passed by the British Parliament in 1867, joined Quebec, Ontario, New Brunswick and Nova Scotia into a Dominion of Canada. The *British North America Act, 1867*, was the result of negotiations among delegates from all four territories who had gathered at a series of three conferences, the most famous of which was the Charlottetown meeting in 1864. The delegates of these conferences became known as the Fathers of Confederation. They were also the authors of Canada's basic constitutional law.

Division of powers

What is the balance of power between the federal and provincial governments? What societal values are reflected in the *Constitutional Act, 1867*?

The *British North America Act, 1867*, now called the *Constitution Act, 1867*, divided law-making powers between the federal and provincial governments.

- Powers of the federal government: entitled to make laws in relation to the peace, order and good government of Canada on all matters not assigned to the legislatures of the provinces. This includes regulation of trade and commerce, unemployment insurance, taxation, postal service, census and statistics, military and defense matters, navigation and shipping, seacoast and inland fisheries, money making and banking, weights and measures, bills of exchange (e.g., cheques), bankruptcy, patents, copyright, Indians, marriage and divorce, and criminal law, including penitentiaries.
- Powers of the provincial government: entitled to make laws in relation to taxation for provincial purposes, hospitals, municipalities, store and alcohol licenses, solemnization of marriage, property and civil rights, administration of justice, education, provincial prisons, all matters of a private or local nature and nonrenewable natural resources (e.g., forestry and hydro-electricity).

Court decisions and **national negotiations** have added to or clarified these powers. For example, federal responsibility for unemployment insurance was the result of national negotiations. The exact **delimitation** between the federal government's responsibility for "marriage" and the provincial responsibility for the "**solemnization** of marriage" continues to be a matter of court decision.

The *Charter of Rights and Freedoms*

What is the primary difference between the *Bill of Rights* and the *Charter of Rights and Freedoms*?

The name of the *British North America Act, 1867*, was formally changed to the *Constitution Act, 1867*, in 1982 and a major addition was made to Canadian constitutional law: the *Charter of Rights and Freedoms*. A *Bill of Rights* had already existed since 1960 but it was limited in its application to the laws of the federal government and only affected a small range of laws. *The Charter of Rights and Freedoms* applies to all Canadian provincial and federal laws. The *Charter* is the most important law in Canada.

How do limitations protect individual rights? Why are there limitations in the *Charter of Rights and Freedoms*?

The following are examples of rights and freedoms that are fully protected in the *Charter*:

- Freedom of conscience and of religion
- Freedom of thought, belief, opinion and expression, including **freedom of the press**
- Freedom of peaceful **assembly** and of **association**
- Citizens: the right to enter, remain and leave Canada and to take up residency in any province and to pursue the gaining of a livelihood in any province
- The right to life, liberty and the security of the person
- The right to be secure against unreasonable search and seizure
- The right not to be arbitrarily detained
- The right, on arrest or detention, to be informed of the reasons therefore, to retain a lawyer and to have the validity of the detention determined by a judge at the earliest opportunity
- The right of persons charged with a crime to be tried within a reasonable time, to not be **compellable** as a witness against themselves and to be **presumed innocent** until proven guilty
- The right not to be tried or punished twice for the same crime
- The right not to be subjected to cruel and unusual punishment
- The right of witnesses to seal their testimony so that it cannot be used against them except in a subsequent trial for **perjury**
- The right to an interpreter if the defendant cannot understand the proceedings
- The right to equal protection of the law without distinction based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

English and French are the official languages of the governments of Canada and of New Brunswick.

The courts have given the rights and freedoms contained in the *Charter* a generous and broad interpretation. However, they are still subject to reasonable limitations. The most important of these limitations is Section 1 of the *Charter*, which authorizes laws that might violate a *Charter* right or freedom, provided that the violation "can be demonstrably justified in a free and democratic society." This clause has been used to allow legislation that outlaws **hate propaganda**. Other parts of the *Charter* set out specific exceptions, which apply only to that right. This is the case with the **mobility rights** of citizens, which can be restricted by law in favour of **affirmative action** laws, or laws that set social assistance (welfare) residency criteria.

BACKGROUNDER

Frequently asked questions about the *Charter of Rights and Freedoms*

"The *Charter* is the most important law we have in Canada." Why is the *Charter of Rights and Freedoms* important:
- Politically
- Legally
- Socially
- Morally?

Q: Why is it important that the* Charter *is part of the Constitution?

A: The Constitution is the supreme law of Canada. Generally speaking, all other laws must be consistent with the rules set out in the Constitution. If they are not, they may not be valid. Since the *Charter* is part of the Constitution, laws that limit *Charter* rights may be invalid. This makes the *Charter* the most important law we have in Canada.

However, the *Charter* itself allows governments to put some limits on *Charter* rights. Section 1 of the *Charter* says that other laws may limit the rights and freedoms in the *Charter* so long as those laws are reasonable and justified in a free and democratic society. So a law that limits a *Charter* right is nevertheless valid if it conforms with Section 1.

Because the *Charter* is part of the Constitution, governments must try to make sure that new laws are consistent with it. For example, the federal Department of Justice must make sure that new laws proposed by the federal government comply with the *Charter*.

Q: How long has the* Charter *been in force?

A: The *Charter* came into effect on April 17, 1982. It was part of a package of reforms contained in a law called the *Constitution Act, 1982*. One section of the *Charter*, Section 15, came into effect only on April 17, 1985, three years after the rest of the *Charter*. This delay gave governments time to bring their laws into line with the equality rights in Section 15.

How can laws create rights for individuals? How can laws ensure freedoms?

Q: Are all of my rights contained in the* Charter*?

A: No. The *Charter* contains the rights and freedoms that Canadians believe are essential in a free and democratic country. These rights and freedoms have been set out in the Constitution as a way of making sure that they are given the greatest protection possible under the law.

The federal government and the provincial and territorial governments all have many other laws that also provide rights and freedoms. Laws that provide rights and freedoms include laws against discrimination in employment and accommodation, consumer protection laws, environmental laws and, in the area of criminal law, laws that give rights to witnesses, victims and persons accused of crimes, to name only a few. Other rights may derive from judge-made law, called the common law, that may exist independent of any government-made law. The right not to be detained for a lengthy period of time without a charge is an example.

Q: Who enjoys* Charter *rights?

A: Generally speaking, any person in Canada, whether a Canadian citizen, a permanent resident or a newcomer, has the rights and freedoms contained in the *Charter*. There are some exceptions. For example, the *Charter* gives some rights only to Canadian citizens – the right to vote (in Section 3 of the *Charter*) and the right "to enter, remain in and leave Canada" (in Section 6 of the *Charter*).

What limitations do you think a free and democratic society would accept as reasonable?

Q: Can the government take away my* Charter *rights?

A: Section 1 of the *Charter* says that governments may limit *Charter* rights so long as those limits are ones that a free and democratic society would accept as reasonable.

It is also possible for governments to pass laws that take away some rights under the *Charter*. Under Section 33 of the *Charter*, sometimes called the "notwithstanding clause," Parliament or a legislature can make a particular law exempt from certain sections of the *Charter*:

- The fundamental freedoms (in Section 2)
- The legal rights (in Sections 7 to 14)
- The equality rights (in Section 15).

How can governments make changes to the *Charter*?

However, a law that limits *Charter* rights under the notwithstanding clause expires after five years. This clause is very rarely used.

Governments can also make changes to the *Charter* to add to or subtract from the rights it contains. However, this is very difficult. To make a change to the *Charter*, the federal Parliament and seven of the ten provincial legislatures must agree to it. The population of those seven provinces must also make up at least 50 percent of the total population of Canada. The *Charter* has been amended only twice since 1982.

What kinds of remedies would be considered "appropriate and just in the circumstances"?

Q: What can I do if my* Charter *rights have been denied?

A: The *Charter* provides for three kinds of actions by persons whose rights have been denied. These actions are referred to as legal "remedies." First, the *Charter* says that a person can ask a court for a remedy that is "appropriate and just in the circumstances." For instance, a court may stop proceedings against a person charged with an offence if his or her right to a trial within a reasonable time has been denied.

A second remedy is available when persons carrying out investigations for the government (e.g., police officers) violate an individual's *Charter* rights. This may happen, for example, when police officers improperly search for evidence on private property and violate a person's right to privacy. In this situation, the person can ask a court to order that the evidence not be used against the person in a trial. A court will make an order like this if it is clear that using such evidence at trial would "bring the administration of justice into disrepute" (under Section 24 of the *Charter*).

Finally, if a court finds that a law violates *Charter* rights, it can rule that the law has no force (under Section 52 of the *Constitution Act, 1982*).

BACKGROUNDER

The *Charter of Rights and Freedoms* and Canadian and Alberta human rights law

The entrenchment of human rights

How does the *Charter of Rights and Freedoms* entrench human rights?

In Canada, our human rights are **entrenched** in the 1982 *Charter of Rights and Freedoms*. The *Charter* guarantees certain rights and freedoms to all Canadians. Government actions must be consistent with the *Charter* because the *Charter* applies to the Parliament and government of Canada and to the legislature and government of each province and territory.

All provinces and territories have human rights laws that are intended to protect these rights. The difference between the *Charter* and human rights laws is that the *Charter* applies to government actions while human rights laws apply to non-government actions.

The *Canadian Human Rights Act*

The *Canadian Human Rights Act* protects the equality rights of Canadians on a federal level. It is administered by the Canadian Human Rights Commission. The intent of the *Canadian Human Rights Act* is similar to provincial and territorial and human rights laws, although the protected grounds vary slightly in each province and territory. The Alberta Human Rights and Citizenship Commission and the Canadian Human Rights Commission are of equal stature, but they administer their legislation separately. One piece of legislation does not supersede the other.

The *Alberta Human Rights, Citizenship and Multiculturalism Act*

Discuss the rights safeguarded by the *Alberta Human Rights, Citizenship and Multiculturalism Act*.

To safeguard the equality rights of Albertans, the *Alberta Human Rights, Citizenship and Multiculturalism Act* prohibits discrimination in the areas of employment practices and job applications and advertisements; tenancy; goods, services, facilities or accommodation generally available to the public; public statements, publications, signs and notices; and membership in any trade union employees' organization or professional association.

The *Act* prohibits discrimination in these areas on the **grounds** of race, colour, ancestry, place of origin, religious beliefs, gender (includes sexual harassment, pregnancy and equal pay for same or similar work), physical or mental disabilities, age, marital status, family status and source of income, and sexual orientation.

The *Act* is primacy legislation – it has precedence over any other provincial laws that conflict with it unless otherwise stated. It is the task of the Alberta Human Rights and Citizenship Commission to accept and settle complaints of discrimination through **conciliation** and investigation, and to provide education on human rights to Albertans.

BACKGROUNDER

The sections of the *Charter of Rights and Freedoms*

Section 1

Guarantee of rights and freedoms

WHAT SECTION 1 SAYS:

Should there be limits to our rights and freedoms? What kinds of limits, if any, should there be?

The Canadian *Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

WHAT SECTION 1 MEANS:

The *Charter of Rights and Freedoms* protects the basic rights and freedoms of all Canadians that are considered essential to preserving Canada as a free and democratic country. It applies to all governments – federal, provincial and territorial – and includes protection of the following:

- Fundamental freedoms
- Democratic rights
- The right to live and seek employment anywhere in Canada
- Legal rights: the right to life, liberty and personal security
- Equality rights for all
- The official languages of Canada
- Minority language education rights
- Canada's multicultural heritage
- Aboriginal peoples' rights.

The rights and freedoms in the *Charter* are not **absolute**. They can be limited in order to protect other rights or important national values. For example, freedom of expression may be limited by laws against hate propaganda or pornography.

Section 1 says that *Charter* rights can be limited by other laws so long as those limits can be shown to be reasonable in a free and democratic society.

The Supreme Court of Canada has stated that a limit on *Charter* rights is acceptable if:

- The limit deals with a pressing and substantial social problem, and
- The government's response to the problem is reasonable and demonstrably justified.

To determine this, a court will employ a proportionality test to determine if there is a rational connection between the law and the true objective it is designed to meet. For example, a court will inquire if the law impairs the rights of the claimants no more than is reasonably necessary in order to accomplish the purpose.

Section 2

Fundamental freedoms

WHAT SECTION 2 SAYS:

Are there fundamental freedoms that should not be protected in order to protect the rights of others? Why or why not?

Everyone has the following fundamental freedoms:

- Freedom of conscience and religion
- Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
- Freedom of peaceful assembly
- Freedom of **association**.

WHAT SECTION 2 MEANS:

The *Charter* guarantees certain freedoms for everyone in Canada. Canadian traditions and laws have reflected the freedoms set out in Section 2 for many years. Since 1982, the *Charter* has given these freedoms constitutional protection.

Under Section 2 of the *Charter*, Canadians are free to follow the religion of their choice. In addition, they are guaranteed freedom of thought, belief and expression. Since the media are an important means of communicating thoughts and ideas, the *Charter* protects the right of the press and other media to speak out. Our right to gather and act in peaceful groups is protected, as is our right to belong to an association such as a trade union.

These freedoms are set out in the *Charter* to ensure that Canadians are free to create and express their ideas, gather to discuss them and communicate them widely to other people. These activities are basic forms of individual liberty. They are also important to the success of a democratic society. In a democracy, people must be free to discuss matters of **public policy**, criticize governments and offer their own solutions to social problems.

Even though these freedoms are very important, governments can sometimes limit them. For example, laws against pornography and hate propaganda are reasonable limits on freedom of expression because they prevent harm to individuals and groups.

Section 3

Democratic rights

WHAT SECTION 3 SAYS:

Who should be able to vote or not vote? Why?

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Sections 3, 4 and 5 of the *Charter* contain rules that guarantee Canadians a democratic government.

WHAT SECTION 3 MEANS:

The *Charter* guarantees to all citizens the right to be involved in the election of their governments. It gives them the right to vote in federal, provincial or territorial elections, along with the right to run for public office themselves.

Again, some limits on these rights may be reasonable, even in a democracy. For example, the right to vote or stand for election is limited to persons 18 years of age or older.

Section 4

WHAT SECTION 4 SAYS:

Why is it important to have a limit on the time between elections in Canada?

No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the **writs** at a general election of its members.

In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

WHAT SECTION 4 MEANS:

A basic principle of democracy is that a government must consult the voters and stand for re-election at regular intervals. Section 4 reflects this principle. It says that no Parliament or legislative assembly can continue in power for longer than five years. Only under extraordinary circumstances, such as a war or national emergency, may a government stay in office for a period longer than five years.

Section 5

WHAT SECTION 5 SAYS:

Why is Parliament and each provincial legislature required to sit at least once a year? How is this a fundamental principle of democracy?

There shall be a sitting of Parliament and of each legislature at least once every 12 months.

WHAT SECTION 5 MEANS:

Another basic democratic principle is that a government must explain its actions to the people. Section 5 of the *Charter* makes it clear that Parliament and the legislative assemblies must hold a session at least once a year. This rule ensures that elected members and the public have a chance to question government actions on a regular basis.

Section 6

Mobility rights

WHAT SECTION 6 SAYS:

Why is it important to guarantee the rights of Canadians to move freely inside Canada? What problems would occur if this were not the case?

Every citizen of Canada has the right to enter, remain in and leave Canada.

Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right:

- To move to and take up residence in any province
- To pursue the gaining of a livelihood in any province.

WHAT SECTION 6 MEANS:

Section 6 protects the right of Canadians to move from place to place.

Section 6(1) ensures that all Canadian citizens are free to come and go as they please.

Extradition laws place some limits on these rights. These laws state that persons in Canada who face criminal charges or punishment in another country may be ordered to return to that country.

Section 6(2) gives all Canadian citizens and permanent residents the right to move to and live in any province or territory, where they may also look for work or set up a business.

Section 6(3) makes clear that provinces may decide to give social benefits such as welfare only to persons who have lived in the province for a certain period of time. They may also pass employment laws that require workers to have the necessary qualifications to practice their profession or trade.

In addition, Section 6(4) allows a province that has an employment rate below the national average to create programs that favour its own residents.

Sections 7 to 14 set out rights that protect us in our dealings with the justice system. They ensure that individuals who are involved in legal proceedings are treated fairly, especially those charged with a criminal offence.

Legal rights

Sections 7 to 14 set out rights that protect us in our dealings with the justice system. They ensure that individuals who are involved in legal proceedings are treated fairly, especially those charged with a criminal offence. It also extends to other offences, in circumstances where those convicted are liable to imprisonment as a penalty.

Section 7

Legal Rights

WHAT SECTION 7 SAYS:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

How do the following values apply to Section 7 of the Charter:

- Liberty
- Equality
- Justice
- Rights
- Responsibilities?

WHAT SECTION 7 MEANS:

Section 7 guarantees the life, liberty and personal security of all Canadians. It also demands that governments respect the basic principles of justice whenever it intrudes on those rights. Section 7 often comes into play in criminal matters because an accused person clearly faces the risk that, if convicted, his or her liberty will be lost.

As an example of the effect of Section 7, the Supreme Court of Canada has ruled that individuals may not be sent to prison unless there is some proof that they did something wrong (see Case #2 in the "Constitutional Cases" handout). To imprison a person who had acted reasonably would offend the principles of fundamental justice.

Section 8

WHAT SECTION 8 SAYS:

Everyone has the right to be secure against unreasonable search or seizure.

Are there situations where the police should be able to search people when there may not be reasonable cause? If so, give examples of such situations.

WHAT SECTION 8 MEANS:

The purpose of Section 8, according to the Supreme Court of Canada, is to protect a reasonable expectation of privacy (see Case #3 in the "Constitutional Cases" handout). This means that those who act on behalf of a government must carry out their duties in a fair and reasonable way. Officials such as police officers cannot enter private property or take things from others unless they can show that they have a good reason. In most cases, they are allowed to enter private property to look for evidence or to seize things only if they have been given a search warrant by a judge. On the other hand, government inspectors may enter business premises without a warrant to check whether government regulations are being observed.

Section 9

WHAT SECTION 9 SAYS:

Everyone has the right not to be arbitrarily detained or imprisoned.

Have there been times in Canadian history when Canadians have been detained without reason?

WHAT SECTION 9 MEANS:

This Section says that government officials cannot take individuals into custody or hold them there without a good reason. For example, a police officer must have reasonable grounds for detaining a person. However, courts have stated that laws allowing officers to stop drivers for breath tests are reasonable and do not violate the *Charter*.

Section 10

WHAT SECTION 10 SAYS:

How quickly have you the right to a lawyer if you are arrested? Why is this right important in a democracy?

Everyone has the right on arrest or detention

a. To be informed promptly of the reasons therefor

b. To retain and instruct counsel without delay and to be informed of that right

c. To have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

WHAT SECTION 10 MEANS:

The rights in Section 10 apply when a person is arrested or detained. They ensure that people under arrest have a chance to challenge the lawfulness of their arrest. The police must immediately tell them the reasons for their arrest. These people also have the right to talk to a lawyer to get legal advice about their situation, and the police must tell them what legal aid services are available in their area. Persons under arrest also have the right to ask a judge to decide whether their arrest was legal and, if it was not, to order their release.

Section 11

WHAT SECTION 11 SAYS:

How does the principle of the "presumption of innocence" apply to Section 11 of the *Charter*? Could there ever be a situation in which it is permissible to assume someone is guilty? Explain.

Any person charged with an offence has the right:

- To be informed without unreasonable delay of the specific offence
- To be tried within a reasonable time
- Not to be compelled to be a witness in proceedings against himself or herself in respect of the offence
- To be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal
- Not to be denied reasonable bail without just cause
- Except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment

- Not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of laws recognized by the community of nations
- If finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again
- If found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

What Section 11 means:

Section 11 sets out several important rules that protect anyone charged with an offence under federal or provincial law.

Persons accused of a crime must be told promptly what offence they are charged with, their trials must take place within a reasonable time, and they cannot be forced to testify at their own trials.

Anyone accused of breaking the law is presumed to be innocent until proven guilty. This means that the prosecution must prove beyond a reasonable doubt that the person committed the offence before he or she can be found guilty. The trial must also be conducted fairly before a court that is unbiased and independent of political or any other influence. A fair trial ensures that the rights of the accused are properly protected.

An accused person is entitled to reasonable bail and, for very serious charges, has the right to trial by jury.

A court cannot convict a person of a crime unless the law in force at the time of the offence specifically stated that the actions in question were illegal.

In a situation where a person commits an offence and, before he or she is sentenced, a new law alters the fine or term of imprisonment that applies, that person must be sentenced under whichever law is the more lenient.

Section 12

WHAT SECTION 12 SAYS:

Does "cruel and unusual punishment" apply to capital punishment? Justify your opinion.

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

WHAT SECTION 12 MEANS:

Governments cannot treat individuals or punish them in an excessively harsh manner. For instance, the Supreme Court of Canada held that a law creating a minimum sentence of seven years' imprisonment for the crime of importing narcotics into Canada, regardless of the quantity involved, imposed cruel and unusual punishment (see Case #4 in the "Constitutional Cases" handout).

Section 15

Equality rights

WHAT SECTION 15 SAYS:

Should there be affirmative action programs (giving advantages to some people over others) for minority groups in areas such as employment?

- **Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, gender, age, or mental or physical disability.**
- **Subsection 1 does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those that are disadvantaged because of race, national or ethnic origin, colour, religion, gender, age, or mental or physical disability.**

WHAT SECTION 15 MEANS:

Every individual in Canada – regardless of race, religion, national or ethnic origin, colour, gender, age or physical or mental disability – is to be considered equal. This means that governments must not discriminate on any of these grounds in its laws or programs.

The courts have held that Section 15 also protects equality on the basis of other characteristics that are not specifically set out in it. For example, this Section has been held to prohibit discrimination on the grounds of sexual orientation.

The Supreme Court of Canada has stated that the purpose of Section 15 is to protect groups that suffer social, political and legal disadvantage in society (see Case #5 in the "Constitutional Cases" handout). For example, discrimination occurs where a person, because of a personal characteristic, suffers disadvantages or is denied opportunities available to other members of society.

Distinctions drawn on the basis of actual characteristics are generally not discriminatory. For example, because there are actual differences between children and adults, the government is entitled to draw distinctions on the basis of age of majority for gaming and liquor laws.

Discrimination arises when distinctions are drawn on the basis of presumed or stereotypical characteristics, for example, a distinction drawn on the basis of race without regard to individual abilities.

Discrimination can also arise when the government fails to accommodate the actual characteristics of a particular group. For example, failure to provide sign language interpretation where it is necessary for effective communication denies deaf individuals the equal benefit of the law and discriminates against them in comparison to hearing persons. Governments are required, pursuant to Section 15 of the *Charter*, to take special measures to ensure that disadvantaged groups are able to benefit equally from government services.

At the same time as it protects equality, the *Charter* also allows for certain laws or programs that favour disadvantaged individuals or groups. For example, programs aimed at improving employment opportunities for women, Aboriginal peoples, visible minorities, or those with mental or physical disabilities are allowed under Section 15(2).

Section 23

Minority language educational rights

What Section 23 says:

How should decisions be made about language rights? What implications does this Section have for minority rights?

Citizens of Canada

- Whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- Who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

The right of citizens of Canada under subsections 1 and 2 to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province:

- Applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction
- Includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

WHAT SECTION 23 MEANS:

This Section of the *Charter* requires provincial governments to provide education to Canadians in the official language of their choice, even in areas where a minority of residents speak that language.

In nine provinces and in the territories, most people speak English. In these areas, Canadian citizens have the right to have their children educated in French if any of the following three situations apply:

- Their first language is French
- They received their own primary education in Canada in French
- They have a child who has received or is receiving his or her education in French in Canada.

In Quebec, where most people speak French, Canadian citizens have the right to have their children educated in English:

- If they received their own primary instruction in Canada in English, or
- If they have a child who has received or is receiving his or her education in English in Canada.

According to Section 59 of the *Constitution Act, 1982*, the right of persons whose first language is English and who wish to have their children receive English-language instruction does not apply in Quebec until permitted by the legislative assembly or government of Quebec.

In all cases, the right to receive an education in a minority language applies only when there is a sufficient number of eligible children to justify providing schooling in that language. Where those numbers do exist, governments must provide the necessary facilities.

Section 24

Enforcement

Should illegal evidence be excluded from a trial under all circumstances? Think of examples where illegal evidence could be used.

WHAT SECTION 24 SAYS:

- Anyone whose *Charter* rights or freedoms have been infringed on or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
- Where, in proceedings under Subsection 1, a court concludes that evidence was obtained in a manner that infringed or denied any *Charter* rights or freedoms, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

WHAT SECTION 24 MEANS:

Anyone who believes his or her rights or freedoms under the *Charter* have been infringed on by any level of government can go to court to ask for a remedy. That person then must show that a *Charter* right or freedom has been violated. If the limit is one that is set out in the law, then the government will have an opportunity to show that the limit is reasonable under Section 1 of the *Charter*. If the court is not convinced by the government's argument, then it can grant whatever remedy it feels is appropriate under the circumstances. It may also make an order that the law in question is of no force or effect. This power comes from Section 52 of the *Constitution Act, 1982*.

In criminal cases, a court may make an order stopping or delaying the trial of a person whose rights have been denied. A special remedy is available under Section 24(2) if the denial of a *Charter* right takes place during a government investigation. If, for example, a government gets evidence through an unreasonable search or seizure (Section 8), then a court may order that the evidence not be used in court. A court will make an order of this kind only if use of the evidence "would bring the administration of justice into disrepute."

GLOSSARY

Constitutional justice and the *Charter of Rights and Freedoms*

Something is **absolute** only if it is free from restriction, qualification or condition.

Affirmative action is a set of actions designed to eliminate existing and continuing discrimination, to remedy effects of past discrimination, and to create systems and procedures to prevent future discrimination.

The meeting together of a considerable number of persons at the same place is an **assembly.**

The act of a number of persons uniting together for some special purpose or business results in an **association.**

An accused person's spouse is not a **compellable** witness for the prosecution.

Conciliation is the settlement of a dispute in an agreeable manner. It involves a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved.

Court decisions are rulings, orders or judgements made after consideration of the facts and the law.

Delimitation is a fixing of limits or boundaries between the powers of the federal government and the provinces.

Rights **entrenched** in the Charter can not be altered except by use of the amending procedures of Parliament.

Extradition laws are laws regarding the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged.

Freedom of the press refers to the dissemination of expression of thought, belief or opinion through the medium of the press, without censure.

Grounds are the reason or point that something (as a legal claim or argument) relies on for validity, such as grounds for divorce.

Hate propaganda is the systematic dissemination of doctrine, rumour or selected information to promote or injure a particular race, color, enthnicity, religion or national origin.

Mobility rights refer to the rights of a person to move about, within and outside the national boundaries.

National negotiations involve a bargaining process in which the federal government and the provinces attempt to reach agreement on a disputed or potentially disputed matter.

The act of a person's deliberately making false or misleading statements while under oath is **perjury.**

Presumed innocent is the fundamental criminal-law principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence.

Public policy is a broad statement regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society.

Solemnization of marriage refers to the performance of a formal marriage ceremony before witnesses, as distinguished from a clandestine or common-law marriage.

A **writ** is a court's written order, in the name of a state or other competent legal authority, commanding a person to stop doing some specified act.

Constitutional justice and the *Charter of Rights and Freedoms*

Handouts and visual organizers

The handouts and visual organizers can be used to reinforce, enrich and extend the content provided in the summary and backgrounders.

VISUAL ORGANIZER

Spheres of influence chart

HANDOUT

Six constitutional cases

Case #1:

In *The Queen v. Oakes*, decided in 1986, the Supreme Court of Canada ruled that a section of the *Narcotic Control Act* violated the right to be presumed innocent, which is protected in Section 11(d) of the *Charter*. The Court then considered whether the law was a reasonable limit on that right under Section 1 of the *Charter*.

Should the *Charter* have precedence over other laws and legislation? What limits, if any, do you think should be set? What do you think the decision of the Supreme Court was in this case?

Case #2

The *Motor Vehicle Reference* case, decided in 1985, involved a British Columbia law that imposed a mandatory jail term on people who drove motor vehicles while their driver's licenses were suspended, even if they were not aware of the suspension.

What Section of the *Charter* would this British Columbia law have violated? What do you think the Supreme Court decided in this case?

Case #3

In *Hunter v. Southam, Inc.*, decided by the Supreme Court in 1984, Southam Inc. argued that a search carried out at its offices by government investigators was unreasonable and in violation of the *Charter*.

What Section of the *Charter* would the search of this company's offices have violated? What do you think the Supreme Court decided in this case?

Case #4

In *The Queen v. Smith*, decided in 1987, a person accused of importing a narcotic into Canada argued that the penalty for that offence amounted to cruel and unusual punishment. The *Narcotic Control Act* required that anyone convicted of that offence serve a minimum of seven years in jail. The quantity of narcotic involved did not affect the minimum sentence.

Should the *Charter* set limits on other laws and legislation? What kinds of circumstances might warrant changes to existing laws? What do you think the decision of the Supreme Court was in this case?

Case #5

Andrews v. The Law Society of British Columbia, decided by the Supreme Court in 1989, involved a challenge to a rule in British Columbia requiring persons who wanted to practice law in that province to be Canadian citizens.

What Section of the *Charter* would this British Columbia rule have violated? Can citizenship be considered a potential basis for discrimination? What do you think the Supreme Court decided in this case?

Case #6

In *Sparrow v. The Queen*, decided in 1990, the issue was whether limits imposed on the fishing rights of Aboriginal peoples were inconsistent with Section 35 of the *Constitution Act, 1982*, which recognizes Aboriginal and treaty rights.

Considering the government's special relationship with and responsibility for Aboriginal peoples, how should rights for Aboriginal peoples be protected under the *Charter*? What kind of ruling do you think the Supreme Court made in this case?

HANDOUT

Decisions on the six constitutional cases

Case #1

The Supreme Court concluded that the law was not a reasonable limit. Relying on Section 52 of the *Constitution Act, 1982*, the Court declared the law to be "of no force or effect," that is to say, invalid.

Case #2

The Supreme Court ruled that such a law violates Section 7 of the *Charter*. It is a principle of fundamental justice that individuals should be punished by a jail term only if there is some proof that they did something wrong. Someone who drives a car while not knowing that his or her license has been suspended is not doing anything that should be punished by a jail term. The Court declared the law to be of no force or effect under Section 52 of the *Constitution Act, 1982*.

Case #3

The Supreme Court stated that Section 8 protects reasonable expectations of privacy. These expectations can usually be protected by requiring police officers or other investigators to get a search warrant before they enter private property to look for or seize evidence. The Court also stated that warrants must be issued by judges or other impartial officials. It concluded that the search of Southam Inc.'s offices was unreasonable because the search warrant used by the investigators was not issued by a judge or an impartial official.

Case #4

The Supreme Court concluded that this law violated Section 12 of the *Charter*. A person who imported a very small amount of a narcotic should not receive such a severe punishment. The Court therefore ruled that the law was of no force or effect according to Section 52 of the *Constitution Act, 1982*.

Case #5

The Supreme Court found that this rule violated Section 15 of the *Charter*, even though discrimination based on citizenship is not specifically mentioned in that Section. The Court stated that discrimination occurs in situations where a person suffers disadvantages or is denied opportunities available to other members of society. By denying people who were not Canadian citizens the opportunity to practice law, the British Columbia rule discriminated against them. The Court went on to conclude that the British Columbia law was not a reasonable limit under Section 1 of the *Charter*, and it therefore declared that the British Columbia law was invalid under Section 52 of the *Constitution Act, 1982*.

Case #6

The Supreme Court held that the treaty rights of Aboriginal peoples should be interpreted broadly. The government, on the other hand, must show that limits on those rights are justified and consistent with its special relationship with and responsibility for Aboriginal peoples.

3 Aboriginal justice

This thematic section can be used to teach generalizations and concepts related to the roles, rights and responsibilities of governments and of citizens. The historical context of Aboriginal treaties and present-day land claim issues are critical aspects in understanding the multifaceted nature of Canadian citizenship.

The following outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada can be met through the Aboriginal justice thematic section.

Critical and creative thinking outcomes

This thematic section encourages the development of the following critical and creative thinking skills.

Students should acquire the knowledge and skills necessary to:

- Design and evaluate alternative methods of providing for the protection of human rights in society
- Examine how questions that involve the needs of the individual and the needs of the state are resolved

Inquiry issues and questions

This thematic section supports the use of issues and questions for inquiry from the Alberta Social Studies 10 Program of Studies.

- How can citizens influence decision making by governments in Canada?
- How are human rights protected in Canada?

Knowledge outcomes

This thematic section develops generalizations, key understandings, concepts and related facts from the Alberta Social Studies 10 Program of Studies.

Theme I: Politics and government

Politics are a feature of everyday life

- Decision making
- Organization

  Identify examples of consensus, majority rule, influence, negotiation and compromise at school, community, provincial and national levels (laws, services, etc.)

The structure and functions of government in Canada are important

- Democracy
- Federalism
- Constitution

  Examine parliamentary democracy in Canada, including the following:
  - Levels of government (federal; provincial; municipal)
  - Constitution (*Constitution Act, 1867* – formerly known as the *British North America Act, 1867*; majority and minority rights; the *Constitution Act, 1982*)

- Division of powers

  Functions of government (executive function; legislative function; judicial function)
- Parliamentary system.

Theme II: Citizen participation

The citizen has a role in the political process

- Participation

  Briefly examine citizens' participation in the political process:
  - Petitioning
  - Lobbying
  - Demonstrating.

Political differences are resolved through a variety of approaches

- Democratic process
- Majority and minority rights
- Negotiation and compromise

  Identify ways of resolving differences
  - Legal actions
  - Federal/provincial conferences
  - Royal commissions
  - Arbitration.

Theme III: Rights and responsibilities

Rights and responsibilities are associated with citizenship

- Rights

  Examine rights (individual and collective) in Canadian society (human, civil, legal, minority, economic, cultural, language, political)
- Freedoms
- Justice
- Equality
- Responsibilities

  Examine responsibilities in Canadian society:
  - Political (franchise)
  - Moral (respect for the rights of others).

There are basic human rights that need to be protected

- Human rights
- Discrimination

  Develop an understanding of human rights and the need to protect them by briefly examining the following:
  - Examples of situations where human rights were not protected (Canada; e.g., Aboriginal peoples).

There are various means that help to protect and preserve rights in Canada

- Entrenchment of rights
- Safeguarding rights

  Explain how the following help to protect human rights:
  - Aboriginal rights.

3 Aboriginal justice

Focus questions and activities

In this thematic section, there are three focus questions and a variety of learning activities. The focus questions and activities in the Aboriginal justice thematic section are designed to:

- Organize the information in this thematic section around the three themes in the Alberta Social Studies 10 Program of Studies Topic B
- Involve students in critical and creative thinking activities
- Establish questions and issues for inquiry.

Teacher preparation

These student and teacher resources support the activities below.

- **Summary: Aboriginal justice**
- **Backgrounder: A historical context**
- **Backgrounder: A perspective on Aboriginal self-government**
- **Handout: Treaties in Western Canada**
- **Websites**

The website of the Department of Indian and Northern Affairs Canada provides information on Aboriginal programs and research. For information on Aboriginal peoples and history, go to www.ainc-inac.gc.ca/pr/index_e.html. For information on Aboriginal self-government, go to www.ainc-inac.gc.ca/pr/info/infor105_e.html. An introduction to Aboriginal law in Canada, including historical and current issues and cases, is available at www.bloorstreet.com/200block/brintro.htm.

- **Assessment**

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How were decisions about Aboriginal rights made by governments in Canada?

For a summary of the history of government policy regarding Indians in Canada see "The Indian Act: An Historical Perspective" by John F. Leslie, appearing in *Canadian Parliamentary Review*, Summer 2002:23-27.

The historical context of Aboriginal rights and issues

Have students work in small groups to study the historical context of Aboriginal treaty and land claim issues facing Canadian society today. Ask each group to identify the factors that influenced political and social decision making by Canadian governments in the past. Have each group look for evidence of:

- Political decisions (actions and legislation)
- Attitudes, values and beliefs of past federal governments
- Attitudes, values and beliefs of Aboriginal peoples
- Negotiation and compromise.

Aboriginal peoples in Alberta

Have students work in small groups to complete a mini-research project (including maps) that investigates the location and history of Aboriginal peoples in Alberta. Have groups use various sources, such as the Internet, to identify the location of various Aboriginal peoples and nations within Alberta and outline the terms in each treaty negotiated with Aboriginal peoples.

Timeline

Have students work in small groups to develop a timeline on the establishment of treaties and reserves in Alberta. Ask each group to use information from different sources, including classroom textbooks or resources, library resources and the Internet. Have groups construct their timelines using both textual and visual information.

Position paper

Have students write a position paper that outlines and defends a personal position on the justice, equity and fairness of Aboriginal treaty negotiations. Have them consider the following questions:

- Were Aboriginal treaty land claims successfully negotiated by governments?
- Why were they successful or unsuccessful?
- What were the consequences for Aboriginal peoples? (Economic success or failure? Self-government issues? Social implications?)

Teacher preparation

These student and teacher resources support the activities below.

- **Summary:** Aboriginal justice
- **Backgrounder:** The current context: Land claim issues
- **Backgrounder:** Resolving differences: Aboriginal self-government
- **Handout:** Significant land settlements in Alberta
- **Websites**

Information on land claims in process for each province is available on the website for the Indian Claims Commission at www.indianclaims.ca/english/claimsmap/mainmap.htm.

Information on the Nisga'a Treaty is available at www.ainc-inac.gc.ca/pr/info/nit_e.html.

An introduction to Aboriginal law in Canada, including historical and current land claim cases, is available at www.bloorstreet.com/200block/brintro.htm.

Canadian links to websites that deal with Aboriginal legislation, issues, perspectives and information is available at www.bloorstreet.com/300block/aborcan.htm.

Information on Aboriginal law and legislation in Canada, constitutional enactments and Canadian court decisions is available at www.waseskun.net/law.htm.

- **Assessment**

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What are the opposing perspectives and how are differences resolved?

Analyzing the case

Ask students to use information on the historical context of Aboriginal issues to write a case study of the evolution of Aboriginal land claims. Ask them to include details about:

- The facts of the story: The establishment of treaty lands
- The issues involved: Land rights
- The arguments: Aboriginal peoples' perspectives versus the interpretation of treaties
- Decisions: How should land rights for Aboriginal peoples be established?

Guest speakers

Work with students to research and develop a list of speakers to invite into the classroom to provide additional information or various perspectives on issues and topics relating to Aboriginal justice. The list of speakers may include individuals who present different perspectives on Aboriginal justice, including elders, Aboriginal people from different occupational groups and judges.

Have each student work with a partner to research contact information for the potential speakers and develop an invitation to speak to the class that includes:

- The purpose of the request
- The topics or issues being studied
- The information students are interested in.

Work with students to contact a potential speaker and present the invitation.

The issue of self-government

How should self-government for Aboriginal peoples be established? Have students write an issue paper that outlines and defends a personal position on what the responsibilities of Aboriginal self-government should be. Have them consider the following questions:

- What interpretations of self-government do different Aboriginal peoples have?
- What responsibilities do Aboriginal people want to establish?
- What is the effect of Aboriginal self-government on federal or provincial governments?
- What are some opinions of non-Aboriginal people?

A students' court

Work with the class to set up and conduct a students' court on an Aboriginal land claim issue, such as one of the significant land claims settlements in Alberta or Canada. Have students work in small groups to research the background of the case, using additional sources such as the media and the Internet.

Have each group develop a scenario around the facts and participants of the case. The scenario should provide details about:

- The facts of the case: The current situation and what is under dispute
- Who is involved: Aboriginal peoples, the federal or provincial governments and other involved parties
- The issues involved in the case: The opposing viewpoints and arguments
- What the decision on the land claim should be.

The students' court format can be implemented much like a debate. However, there is an additional role: a panel of students listens to the opposing viewpoints and makes a judgment on the issue, as a judge would in a court. The students' panel can be asked to confer about their final judgment in front of the class.

To conduct the students' court process, have students take on the following roles:

- A students' panel (a group of students who will listen to the facts of the issue and make a judgment)
- A group that presents one side of the issue
- A group that presents another side of the issue.

Teacher preparation

These student and teacher resources support the activities below.

- **Summary: Aboriginal justice**
- **Backgrounder: Rights and responsibilities**
- **Visual organizer: Venn diagram: Rights and responsibilities**
- **Websites**

To download a full text Internet version of the Aboriginal Policy Framework, go to the Aboriginal Affairs and Northern Development website at www.aand.gov.ab.ca. Click on "Aboriginal Affairs" and then on "Strategic Services."

Canadian links to websites that deal with Aboriginal legislation, issues, perspectives and information is available at www.bloorstreet.com/300block/aborcan.htm.

- **Assessment**

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What rights and responsibilities influence decision making?

Comparing rights and responsibilities

Have students review the concepts of rights and responsibilities. Ask them to complete a Venn diagram that analyzes the similarities and differences between rights and responsibilities from the perspectives of:

- Canadian and Alberta governments (past and present)
- Aboriginal peoples.

Aboriginal rights report

Have students work in small groups to research and write a report that focuses on the following issue statement: "Aboriginal peoples have maintained that they have certain rights that have been guaranteed to them through treaties signed with the federal government, as well as their rights as the first peoples to inhabit Canada."

Ask each group to examine the diverse perspectives of Aboriginal peoples, non-Aboriginal people and governments on the establishment of Aboriginal self-government, using additional sources of information, such as textbook, classroom and library resources and the Internet. Use the following questions to guide the research:

- What do treaties say about protection of Aboriginal rights in these areas: self-government, hunting, justice and land claims?
- What perspectives do different Aboriginal peoples and non-Aboriginal people have on self-government?

Metis rights and responsibilities

Ask students to work in small groups to prepare a poster-size retrieval chart that outlines the rights and responsibilities of Metis people living in settlements in Alberta under the *Metis Settlements Act*. Use additional sources of information, such as textbook and library resources and the Internet.

Summary, backgrounders and glossary

The summary, backgrounders and glossary provide information about Aboriginal justice and can be used in a variety of ways:

- The summary of key content provides a synthesis and advance organizer for the information in the thematic section. The summary can be used as an introduction to the section, a review of key content or an overview of the theme for class or group activities.
- The backgrounders provide information on different aspects of the judicial system. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study and critical thinking development.
- The glossary lists key terms and definitions. These terms appear in bold type throughout the summary and backgrounders.

SUMMARY

Aboriginal justice

A historical context

Treaties with Aboriginal peoples in Canada

- **First Nations** people have a long tradition of treaty making, one that pre-dates the arrival of Europeans in North America.
- The government of Canada and the courts understand **treaties** between the **Crown** and **Aboriginal people** to be solemn agreements that set out promises, obligations and benefits for both parties and create **mutually binding obligations.**
- In Canada, Aboriginal peoples and governments have concluded 68 major treaties over the past 275 years. The treaties cover most of Ontario and the Prairie Provinces as well as parts of Vancouver Island, Northwest Territories, Atlantic Canada and Quebec.

Historic treaties after Confederation

- At Confederation in 1867, the government of Canada "assumed responsibility for Indians, and lands reserved for Indians for securing clear title to land from Aboriginal peoples."
- Between 1871 and 1921, the Crown entered into treaties with various First Nations so as to enable the Canadian government to actively pursue agriculture, settlement and resource development in the Canadian West and the North.

A perspective on Aboriginal self-government

Aboriginal self-government is thousands of years old.

- First Nations and **Inuit** people had been practicing their own forms of government for thousands of years before the arrival of Europeans in Canada.
- They had a wide variety of systems of government.
- First Nations and Inuit people shaped their forms of government to meet their particular needs, which were defined by their own economic, social and geographic conditions.

Colonial policies weakened the authority of Aboriginal governments.

- The colonial governments, and the government of Canada after 1867, passed laws encouraging Aboriginal peoples to adopt the social and political systems of the mainstream, non-Aboriginal population.
- These federal government policies of **assimilation** and control had significant effects. Traditional Aboriginal lifestyles were threatened, and the authority of Aboriginal governments was weakened.

Aboriginal self-government is being re-established.

- Since the late 1940s, Aboriginal leaders have struggled to help their people regain what they believe is their rightful place in Canada.
- Aboriginal peoples want recognition of the right to govern themselves and partnerships with the federal and provincial governments.
- The government of Canada has stated that Aboriginal peoples have the right to govern themselves and decide on matters that affect their communities.
- Aboriginal groups will shape their own forms of government to suit their particular historical, cultural, political and economic circumstances.
- Different Aboriginal groups often have different interpretations of what self-government is.

Two major concerns are:

- The settling of treaty obligations in what all parties believe to be a fair and just manner, one that reflects the "spirit" of the original treaties
- The desire for Aboriginal self-government.

The current context: Land claim issues

Treaty promises: What do treaties mean?

- Most treaties guarantee some traditional fishing and hunting rights.
- Since 1982, treaty rights have been recognized and affirmed under the Constitution.
- Almost as soon as treaties were signed, there were problems in implementing the agreements, and consequently protests by the Aboriginal peoples involved.
- For example, the government was sometimes slow to provide **reserve** land, which resulted in specific treaty land **entitlement** claims.
- In 1973, the federal government implemented a specific claims policy to respond to claims relating to treaty violations.
- First Nations and the Canadian government still do not agree on whether some historical peace and friendship treaties remain in effect and whether **compensation** was adequate for the huge tracts of land taken through some pre-Confederation treaties.
- Today, First Nations and the federal government continue to negotiate a contemporary understanding of treaties.

Modern treaties – comprehensive land claims

- In some areas of Canada, Aboriginal peoples' claims to Aboriginal rights have not been addressed by treaties or other legal means. Comprehensive land claims deal with these issues.
- The James Bay Treaty in Quebec and the Nisga'a Treaty in British Columbia are recent comprehensive treaties.

Types of land claims

In Canada, land claims are described differently depending on the basis on which the claim is being advanced. The three general categories of claims are comprehensive claims, treaty entitlement claims and specific claims.

Comprehensive claims

- Comprehensive (or Aboriginal) claims are based on the continuing use and occupation of traditional lands in areas where Native people still have Aboriginal interests.
- Because settlements may involve interests other than those of the federal government, the appropriate provincial or territorial government is usually involved in the negotiations.
- Because treaties cover all areas of Alberta, it is the position of both the federal and provincial governments that Aboriginal title has been **extinguished** in this province.

Treaty entitlement claims

- Entitlement claims arise where obligations to the Indian as set out in the treaties have not been fulfilled.
- The Alberta government is committed to fulfilling its obligations to the federal government under the terms of the *Natural Resources Transfer Agreement*.

Specific claims

- Specific claims involve a **breach** of the obligations of the federal government as set out in the *Indian Act*, in the administration of **Indian** funds or other assets, or in the **disposition** of Indian lands.
- Alberta may also become involved in specific claims when the federal government settles claims by providing Aboriginal people with cash to purchase private land as additions to existing reserves.

The contemporary significance of treaties

- The government of Canada has affirmed that both historic and modern-day treaties will continue to be key elements in the future relationship between Aboriginal people and the Crown.
- The continuing treaty relationship provides a context of **mutual rights and responsibilities** designed to ensure that both Aboriginal and non-Aboriginal people can enjoy Canada's benefits.

Exploratory discussions with First Nations

- The federal government is seeking the views of groups of Treaty First Nations on how historic treaties and treaty issues can be understood in contemporary terms.

Bridging to self-government

- The government of Canada is working in partnership with Treaty First Nations towards the implementation of self-government through negotiated agreements.
- These agreements will build on the relationships already established by the treaties.

Resolving differences: Aboriginal self-government

The principles of self-government

Under the federal approach to self-government negotiations, all self-government arrangements will be based on these key principles:

- The inherent right is an existing Aboriginal right recognized and affirmed under the Canadian Constitution.
- Self-government will be exercised within the existing Canadian Constitution. Canada's recognition of self-government does not mean sovereignty in the international sense.
- The Canadian *Charter of Rights and Freedoms* will apply fully to Aboriginal governments as it does to all other governments in Canada. The current provisions of the *Charter* that respect the unique Aboriginal and treaty rights of Aboriginal peoples will continue to apply.
- Aboriginal peoples have their own interpretations of how they would like to negotiate and implement their inherent right to Aboriginal self-government.
- Currently, there are a number of Aboriginal self-government agreements throughout Canada and there is no single model of Aboriginal self-government apparent in all such agreements.

Rights and responsibilities

The birth of the treaties

- In exchange for cession of Indian title, the federal government agreed to provide certain specific benefits, including the provision of Indian reserves.
- Most but not all First Nations received some reserve land. Many did not receive their full entitlement. Hence, the federal government has an obligation to fulfill these outstanding treaty land entitlements.

Alberta's treaty obligation

- Under the terms of the *Natural Resources Transfer Agreement* (now the *Constitution Act, 1930*), the province of Alberta is obligated to transfer unoccupied Crown lands back to the federal government, so that Ottawa can fulfill its treaty responsibilities to Indians.

Alberta's Aboriginal Policy Framework

- This framework outlines the Alberta government's approach to Aboriginal affairs and reflects its commitment to help close the gap in living standards between Aboriginal and non-Aboriginal Albertans.
- There is a commitment to work with Aboriginal people and other interested parties towards the well-being and self-reliance of Aboriginal people and to clarify federal, provincial and Aboriginal roles and responsibilities.

Metis settlements legislation

- Alberta is the only province that has passed legislation specifically for **Metis** people.
- The *Metis Settlements Act* was created in an effort to accommodate Metis aspirations of securing their land base, gaining **local autonomy** and achieving **self-sufficiency**.

BACKGROUNDER

A historical context

The following information has been provided by Indian and Northern Affairs Canada, www.ainc-inac.gc.ca.

Treaties with Aboriginal people in Canada

Why is it important to have the Canadian Constitution recognize the treaties?

First Nations have a long tradition of treaty making, one that pre-dates the arrival of Europeans in North America. *The Great Law of Peace*, for example, was negotiated among the Seneca, Mohawk, Onondaga, Oneida and Cayuga Nations around 1450 to put an end to warfare and to establish common laws.

The government of Canada and the courts understand **treaties** between the **Crown** and **Aboriginal people** to be solemn agreements that set out promises, obligations and benefits for both parties. Treaties are solemn agreements between two or more nations that create **mutually binding obligations**. In Canada, Aboriginal peoples and governments have concluded 68 major treaties over the past 275 years. The treaties cover most of Ontario and the Prairie Provinces, as well as parts of Vancouver Island, Northwest Territories, Atlantic Canada and Quebec.

Starting in 1701, in what was eventually to become Canada, the British Crown entered into solemn treaties to encourage peaceful relations between Aboriginal and non-Aboriginal people. Over the next several centuries, treaties were signed to define, among other things, the respective rights of Aboriginal people and governments to use and enjoy lands that Aboriginal people had traditionally occupied.

The historical context

What values and assumptions were the first treaties in Canada based on? How much impact does the spirit of such treaties have on decision-making today?

In the early 1700s, the French and then the English began to establish settlements along the eastern seaboard, and they relied on Aboriginal peoples to help them survive. For the most part, Aboriginal peoples found European trade goods useful. As the English and French competed for control of the eastern fur trade, both nations sought security and alliances among Aboriginal peoples. The first formal treaties were struck between the English and First Nations on the east coast. These treaties attempted to seal pacts of peace and friendship.

Develop a timeline of treaty agreements between Aboriginal peoples and the federal government, from 1763 to 1975.

In 1763, in the aftermath of the war between France and Britain in North America, Chief Pontiac of the Ottawa Nation launched an uprising against British forts around the Great Lakes. To ensure peace, King George III issued the *Royal Proclamation of 1763*, which confirmed Aboriginal land rights and decreed that treaty making must precede settlement. The *Royal Proclamation* established within government a responsibility to protect Aboriginal land rights that still survives today. The British *Royal Proclamation of 1763* prohibited the purchase of Aboriginal lands by any party other than the Crown. The Crown could purchase land from a First Nation group that had agreed to the sale at a public meeting of the group.

In the next decades the new British colonial government and Aboriginal peoples throughout southern Ontario and Vancouver Island concluded 41 treaties to open land for farming, logging, mining and settlement. Half of the Ontario treaties were settled shortly after the War of 1812 to make way for United Empire Loyalists. These include the Upper Canada Treaties (1764 to 1862) and the Vancouver Island Treaties (1850 to 1854). Under these treaties, the First Nations surrendered their interests in lands in areas of what are now Ontario and British Columbia in exchange for certain other benefits, such as **reserves, annuities** and other types of payment, and certain rights to hunt and fish.

"This is our land! It isn't just a piece of pemmican to be cut off and give in little pieces back to us. It is ours and we will take what we want."

Poundmaker, negotiating Treaty 6

What insights does the quotation give you into current issues facing Aboriginal peoples and the Canadian government?

Historic treaties after Confederation

At Confederation in 1867, the government of Canada assumed responsibility for "**Indians**, and lands reserved for Indians" and for securing clear title to land from Aboriginal peoples.

Between 1871 and 1921, the Crown entered into treaties with various First Nations so as to enable the Canadian government to actively pursue agriculture, settlement and resource development in the Canadian West and the North. Prairie First Nations, weakened by the loss of the buffalo and the effects of new diseases such as smallpox, believed treaties would ensure their physical, cultural and spiritual survival. They sought guarantees that they could continue to hunt, fish and govern themselves as before.

Under these treaties, the Aboriginal peoples who occupied these territories **ceded** vast tracts of land to the Crown. In exchange, the treaties provided for such things as reserve lands and other benefits like agricultural equipment and livestock, annuities, ammunition, gratuities, clothing, and certain rights to hunt and fish. The Crown also made some promises regarding the maintenance of schools on reserves, or the provision of teachers or educational assistance to the First Nation parties to the treaties. Because they are numbered 1 to 11, the treaties are often referred to as the "Numbered Treaties." The Numbered Treaties cover Northern Ontario, Manitoba, Saskatchewan and Alberta, and portions of the Yukon, the Northwest Territories and British Columbia. The Robinson-Huron treaties, forerunners of the numbered treaties, cover southern Ontario.

The term "treaties" includes historic treaties made between 1701 and 1923 and modern-day treaties known as comprehensive land claim settlements. Treaty rights already in existence in 1982 (the year the *Constitution Act* was passed) and those that arose afterwards are recognized and affirmed by Canada's Constitution.

BACKGROUNDER

A perspective on Aboriginal self-government

Aboriginal self-government is thousands of years old.

How do Aboriginal peoples view self-government?

First Nations and **Inuit** people had been practicing their own forms of government for thousands of years before the arrival of Europeans in Canada. They had a wide variety of systems of government. First Nations and Inuit people shaped their forms of government to meet their particular needs, which were defined by their economic, social and geographic conditions. Group and individual cultures, along with spiritual beliefs tying the people to their ancestral lands, have also been important sources of inspiration for First Nations and Inuit forms of government.

First Nations and Inuit can trace their systems of government back to the beginnings of their oral history. They see their powers of government as essential to their existence. This is what is meant by the inherent right of self-government for Aboriginal peoples. The right to govern themselves has always belonged to them, as far back as memory goes.

Colonial policies weakened the authority of Aboriginal governments.

What issues are involved in establishing Aboriginal self-government? What are the various perspectives on these issues?

When European colonists arrived in Canada, they established their own colonial governments and signed treaties with many Aboriginal peoples. The aim of these treaties was to ensure friendship between Aboriginal and European colonists, and to share lands and resources.

"These federal government policies of assimilation and control had significant effects." Find out more about what these effects were. What current issues relate to the past policies of the federal government?

The colonial governments gradually began to establish laws and policies aimed at assimilating Aboriginal peoples into non-Aboriginal society. The colonial governments, and the government of Canada after 1867, passed laws encouraging Aboriginal peoples to adopt the social and political systems of the mainstream, non-Aboriginal population. As part of this process of **assimilation,** the federal government set up a system of **residential schools** for First Nations and Inuit children that operated until the 1970s. At these schools, Aboriginal children were forbidden to speak their own languages, or to follow their cultural and spiritual traditions.

These federal government policies of assimilation and control had significant effects. Traditional Aboriginal lifestyles were threatened and the authority of Aboriginal governments was weakened. Over the past few centuries, Aboriginal peoples have become one of the most disadvantaged groups in Canada. People living in Aboriginal communities still have one of the lowest standards of living in the country.

Aboriginal self-government is being re-established.

How has the federal government involved Aboriginal groups in the process of establishing self-government?

Since the late 1940s, Aboriginal leaders have struggled to help their people regain what they believe is their rightful place in Canada. They want recognition of the right to govern themselves and partnerships with the

federal and provincial governments. The federal and provincial governments respect these ideas. By re-establishing their own governments, Aboriginal peoples feel that they will once again be able to control their own lives and lands, and be in a better position to continue the process of social and spiritual healing in their communities.

The federal government states that they recognize the need to strengthen the partnership relationship between Aboriginal peoples and governments in Canada. The government of Canada has stated that Aboriginal peoples have the right to govern themselves and decide on matters that affect their communities.

In August 1995, the federal government undertook a process to negotiate practical arrangements to make Aboriginal self-government a reality. This process is based on the idea that the inherent right of Aboriginal self-government already exists in the Canadian Constitution.

What areas of control does the federal government propose for Aboriginal peoples?

The federal government consulted widely with Aboriginal leaders at the national, regional and local levels in developing a process for self-government negotiations. Under the federal approach, Aboriginal groups negotiate the details of self-government. These areas include education, language and culture, police services, health care and social services, housing, property rights, the enforcement of Aboriginal laws, and adoption and child welfare. Provincial and territorial governments will be involved in negotiations when their interests or jurisdictions are affected.

Aboriginal groups will shape their own forms of government to suit their particular historical, cultural, political and economic circumstances.

Two major concerns are:

- The settling of treaty obligations in what all parties believe to be a fair and just manner, one that reflects the "spirit" of the original treaties
- The desire for Aboriginal self-government.

Adapted from www.ainc-inac.gc.ca/pr/info/infor105_e.html.

BACKGROUNDER

The current context: Land claim issues

Treaty promises: What do treaties mean?

What methods are being used to resolve differences of opinion relating to Aboriginal issues?

Most treaties guarantee some traditional fishing and hunting rights. Early peace and friendship treaties do not deal with land rights, but most pre-Confederation and all numbered treaties promise reserve land, education, farming assistance and annual treaty payments from $5 to $32 a year. Treaty 6 guarantees a "medicine chest." Since 1982, treaty rights have been recognized and affirmed under the Constitution.

Historically, Aboriginal peoples recorded treaties orally, while the government did so in writing. To Aboriginal peoples the oral form of the treaty was as binding as its documentary form was to government. Often the two versions do not agree, and this difference is the subject of continuing debate and legal challenge. The courts have ruled that the oral history and Aboriginal peoples' understanding of a treaty must be considered when determining the true nature of a treaty.

Aboriginal peoples see treaties as symbols of an ongoing relationship. Prairie First Nations understood that they had agreed to share the land with newcomers for farming, settlement and some other purposes. But the government of the day understood that, in signing treaties, Aboriginal peoples had agreed to release ownership of most of their traditional territory and live under Canadian law.

Almost as soon as treaties were signed, there were problems in implementing the agreements, and protests by the Aboriginal peoples involved. For example, the government was sometimes slow to provide reserve land, which resulted in specific treaty land **entitlement** claims.

In 1973, the federal government implemented a specific claims policy to respond to claims relating to treaty violations. However, First Nations and the Canadian government still do not agree on whether some historical peace and friendship treaties remain in effect and whether **compensation** was adequate for the huge tracts of land taken through some pre-Confederation treaties. Today, First Nations and the federal government continue to negotiate a contemporary understanding of treaties.

Modern treaties – comprehensive land claims

What are land claims?

In some areas of Canada, Aboriginal peoples' claims to Aboriginal rights have not been addressed by treaties or other legal means. Comprehensive land claims deal with these issues. The first of these modern-day treaties was the *James Bay and Northern Quebec Agreement*, signed in 1975. To date, the federal government has settled 13 comprehensive claims with Aboriginal people in Canada.

Describe the federal government's Specific Claims Policy.

In response to First Nations' frustration at having to take a number of claims-related matters to the courts, the federal government established the *Specific Claims Policy*. Under this policy, the federal government will look at claims that treaty obligations have not been fulfilled, among other matters.

Types of land claims

Explain:
- Comprehensive claims
- Treaty entitlement claims
- Specific claims.

In Canada, land claims are described differently, depending on the basis on which the claim is being advanced. The three general categories of claims are comprehensive claims, treaty entitlement claims and specific claims.

Comprehensive claims

- Comprehensive (or Aboriginal) claims are based on the continuing use and occupation of traditional lands in areas where Native people still have Aboriginal interests. These specific rights can include the right to exclusive use of certain lands; the right to use, and sometimes participate in, the management of resources on other lands; cash compensation; economic development assistance; and program benefits in areas such as education and health.
- Only the Crown in the right of Canada has the authority to **extinguish Aboriginal title.** Because settlements may involve interests other than those of the federal government, the appropriate provincial or territorial government is usually involved in the negotiations.
- Comprehensive claims are outstanding in those parts of Canada where Aboriginal title has not been extinguished through treaty or by comprehensive settlement, such as the *James Bay Agreement*. Because treaties cover all areas of Alberta, it is the position of both the federal and provincial governments that Aboriginal title has been extinguished in that province.

Treaty entitlement claims

"And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families. . . " (Treaty No. 8). On what basis were treaty entitlement claims established by the federal government?

- Entitlement claims arise where obligations to Aboriginal peoples, as set out in the treaties, have not been fulfilled. Although other matters may be involved, the entitlement claims most commonly involve a remaining entitlement to have reserves set aside as promised under the treaties. All three of the treaties having effect in Alberta (Treaties No. 6, 7 and 8) provide for the setting aside of reserves, based on an entitlement of 128 acres per person. The legal obligations to Aboriginal peoples under the treaties are exclusively the responsibility of the federal government. At

the same time, however, the Alberta government has a legal obligation to the federal government (but not directly to Aboriginal peoples) where outstanding treaty land entitlements are concerned. Thus Alberta's legal obligation is to the federal government, which has the responsibility to Aboriginal peoples of fulfilling the terms of the treaties.

- The Alberta government is committed to fulfilling its obligations to the federal government under the terms of the *Natural Resources Transfer Agreement*. Where land entitlement claims have been validated by both governments, Alberta is prepared to enter into negotiations with Canada and the Aboriginal Band involved in order to reach a fair and equitable settlement.

" The federal government believes that the treaties, and the relationship they represent, can guide the way to a shared future."

What perspectives and beliefs are represented in the information on land claims? Do you think Aboriginal peoples have the same perspectives and beliefs? Why or why not?

Specific claims

- Specific claims involve a **breach** of the obligations of the federal government as set out in the *Indian Act*, in the administration of Indian funds or other assets, or in the **disposition** of Indian lands.
- Alberta may also become involved in specific claims when the federal government settles claims by providing Aboriginal peoples with cash to purchase private land as additions to existing reserves. In these cases Alberta's role is to ensure that the interests of the province, municipalities, third parties and other stakeholders are respected.

The contemporary significance of treaties

In *Gathering Strength – Canada's Aboriginal Action Plan*, announced January 7, 1998, the government of Canada affirmed that both historic and modern-day treaties will continue to be key elements in the future relationship between Aboriginal people and the Crown. The federal government believes that the treaties, and the relationship they represent, can guide the way to a shared future. The continuing treaty relationship provides a context of **mutual rights and responsibilities** designed to ensure that both Aboriginal and non-Aboriginal people can enjoy Canada's benefits.

Exploratory discussions with First Nations

The federal government is seeking the views of groups of Treaty First Nations on how the historic treaties and treaty issues can be understood in contemporary terms. These discussions allow the parties to develop a common understanding of the issues and consider ways to move into a relationship that is oriented to the future. Since many important treaty provisions are of direct interest to them, provincial governments will also have an important role in this process.

Bridging to self-government

The government of Canada is working in partnership with Treaty First Nations to implement self-government through **negotiated agreements.** These agreements will build on the relationships already established by the treaties.

BACKGROUNDER

Resolving differences: Aboriginal self-government

The principles of self-government

What types of strategies are being used to resolve differences in opinion? What strategies would you recommend?

Under the federal approach to self-government negotiations, all self-government arrangements will be based on these key principles:

- The inherent right is an existing Aboriginal right recognized and affirmed under the Canadian Constitution.
- Self-government will be exercised within the existing Canadian Constitution. Canada's recognition of self-government does not mean sovereignty in the international sense. Aboriginal peoples will continue to be citizens of Canada and the province or territory where they live. However, they may exercise varying degrees of jurisdiction and/or authority.
- The Canadian *Charter of Rights and Freedoms* will apply fully to Aboriginal governments as it does to all other governments in Canada. The current provisions of the *Charter* that respect the unique Aboriginal and treaty rights of Aboriginal peoples will continue to apply.
- All federal funding for self-government will come from the reallocation of existing resources.

Do all Aboriginal peoples interpret the concept of Aboriginal self-government the same way?

Aboriginal peoples have their own interpretations of how they would like to negotiate and implement their inherent right to Aboriginal self-government. Currently, there are a number of Aboriginal self-government agreements throughout Canada and there is no single model of Aboriginal self-government apparent in all such agreements.

The three types of Aboriginal self-government arrangements in Canada are:

- Traditional self-government - the traditional constitution of the Iroquois Confederacy, called *Kaianerakowa, The Great Law of Peace*, is an elaborate clan and federal system that deals with specific matters such as emigration, foreign nations, war, referenda, festivals and funerals
- Legislated self-government - the federal ***Indian Act*** is unilaterally created and protected by ordinary legislation and can be unilaterally changed by majority vote in Parliament
- Negotiated self-government - the *Sechelt Indian Band Self-Government Act* is a product of extensive negotiations; such negotiated self-government agreements may or may not be constitutionally protected as an existing treaty under section 35(1) of the *Constitution Act, 1982*.

The substantive content of Aboriginal self-government agreements or negotiations depends on the particular cultural group involved, the geographic area at issue and the types of pre-existing arrangements made with the Crown or the province, such as existing treaties. Aboriginal

self-government arrangements can be negotiated on a single First Nation level, on a district level, such as a Tribal Council, on a regional level or on territorial scale, such as Nunavut.

What are the key principles of the federal government's approach to Aboriginal self-government?

Where all parties agree, rights in self-government agreements may be protected in new treaties under Section 35 of the *Constitution Act, 1982*. They may also be protected through additions to existing treaties, or as part of comprehensive land claims agreements. Federal, provincial, territorial and Aboriginal laws must work in harmony. Certain laws of overriding federal and provincial importance such as the *Criminal Code* will prevail. The interests of all Canadians will be taken into account as agreements are negotiated.

Aboriginal peoples will determine the pace at which self-government arrangements proceed. Putting the arrangements in place will of course take time. The process will require intense local or regional negotiations between Aboriginal peoples, the federal government and the provincial or territorial government concerned.

Aboriginal peoples feel that the re-establishment of Aboriginal self-government will enable them to regain control of their own destinies and operate as full partners in the Canadian federation.

BACKGROUNDER

Rights and responsibilities

The birth of the treaties

Why might it be difficult in 2002 to honour some treaties that were signed long ago? What things must be taken into consideration to ensure that treaty negotiations are fair?

After 1870, when Rupert's Land became part of Canada, treaties were negotiated between the federal government and the various First Nations. Treaties that significantly affect Alberta are Treaty 6 (signed 1876), Treaty 7 (1877) and Treaty 8 (1899).

In exchange for cession of Indian title, the federal government agreed to provide certain specific benefits, including the provision of Indian reserves. Most but not all Aboriginal peoples received some reserve land. Many did not receive their full entitlement. Hence, the federal government has an obligation to fulfill these outstanding treaty land entitlements.

There are a number of sections of the Constitution and the *Charter* that protect the rights of Aboriginal people in Canada. The framers of the Constitution caused existing Aboriginal and treaty rights of the Aboriginal peoples of Canada to be entrenched in Section 35 of the *Constitution Act, 1982*, which states that these rights are recognized and affirmed.

Section 15 of the *Charter* provides an assurance of equality before the law to all persons within Canada, including Aboriginal people, regardless of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. As can be seen, Section 35 of the *Constitution Act* and Section 15 of the *Charter* might be in conflict. This is the reason for Section 25 of the *Constitution Act, 1982* - to make sure entrenched Aboriginal and treaty rights take priority over equality rights, as Aboriginal and treaty rights are based on race.

An important case relating to Aboriginal rights and Section 15 of the *Charter* is the 1999 decision of *Corbiere v. Canada*. In this case, the Supreme Court of Canada held that requirements for members of Indian bands to reside on a reserve before voting in band elections violated Section 15 of the *Charter*. In *Corbiere*, the Supreme Court was concerned about the dramatic increase in the number of off-reserve members, which occurred largely as a result of the passage by Parliament of *An Act to Amend the Indian Act* (Bill C-31). This legislation restored Indian status to most of those who had lost this status, and to their descendents. Prior to this legislation, women with Indian status who married non-Indian men lost their status, and their children did not get status, though men who married non-Indian women, and their children, maintained Indian status. For the Batchewana Band in Corbiere, approximately 85 percent of the growth in band membership consisted of people who were reinstated to Indian status and band membership because of Bill C-31. Certainly, **disenfranchisement** based on sex is not permissible under Section 15 of the *Charter*. Furthermore, the

disenfranchisement contributed to the discrimination associated with preventing these people from voting in band elections. Following this decision, all members of the band, whether resident on reserve or off reserve, have to be given a right to vote.

Alberta's treaty obligation

What are the constitutional obligations of provincial and federal governments?

The province of Alberta also has its obligation as a result of the 1930 transfer of Crown lands and resources from the federal government to the province. Under the terms of the *Natural Resources Transfer Agreement* (now the *Constitution Act, 1930*) the province is obligated to transfer unoccupied Crown lands back to the federal government, so that Ottawa can fulfill its treaty responsibilities to Indians.

Treaty land entitlement claims are filed with the federal government, but both the province and the federal government participate in their negotiation.

What is the treaty right to hunt?

Indians have the right to hunt for food on lands that are unoccupied. Lands that are not in use in a manner incompatible with hunting will be considered to be unoccupied. Some Crown lands are unoccupied. Private lands that are largely abandoned may also be considered to be unoccupied, as was decided by the Supreme Court of Canada in 1996 in the historic case of *R. v. Badger.*

The right to hunt promised by treaty may also imply that other rights associated with hunting are also to be protected. For example, some Indians will have the right to cut down trees and build a hunting cabin on vacant Crown land if they can establish that:

- They have always built shelters in order to hunt, and
- They understood this to be part of the activity of hunting when they signed the treaty with the Crown.

Alberta's Aboriginal Policy Framework

On September 13, 2000, *Strengthening Relationships: The Government of Alberta's Proposed Aboriginal Policy Framework* was released to First Nations, Metis, other Aboriginal people and communities, industry, government and the public.

The Aboriginal Policy Framework:

- Outlines the Alberta government's approach to Aboriginal affairs and reflects its commitment to help close the gap in living standards between Aboriginal and non-Aboriginal Albertans
- Commits to working with Aboriginal people and other interested parties towards the well-being and self-reliance of Aboriginal people and to clarifying federal, provincial and Aboriginal roles and responsibilities
- Envisions a future in which strong **sustainable** Aboriginal economies support self-reliant First Nations, Metis and other Aboriginal people
- Addresses the issues facing people living in Aboriginal communities and in other urban and rural communities, as well as **cross-cultural awareness** and understanding, and the concerns of youth
- Emphasizes collaboration and partnership among Aboriginal people, industry, government and other interested parties to improve the self-reliance of Aboriginal people and communities
- Outlines roles and responsibilities regarding the use and development of public lands, including appropriate consultation.

Metis settlements legislation

Information provided by Indian and Northern Affairs Canada.

Alberta is the only province that has passed legislation specifically for **Metis** people. On November 1, 1990, the government of Alberta proclaimed legislation that provides for a unique form of government on the Metis Settlements. Developed cooperatively by the province of Alberta and the Alberta Federation of Metis Settlements, this legislation establishes the only Metis land base and the only form of legislated Metis government in Canada. The legislation was created in an effort to accommodate Metis aspirations of securing their land base, gaining **local autonomy** and achieving **self-sufficiency.**

How does the Metis settlement legislation in Alberta provide an example of negotiation and government decision making?

Metis settlements

What responsibilities do Metis councils have in governing their settlements?

The *Metis Settlements Act* establishes eight settlements: Buffalo Lake, East Prairie, Elizabeth, Fishing Lake, Gift Lake, Kikino, Paddle Prairie and Peavine. Each settlement is run by a five-person council that is elected by the membership and headed by a chairperson selected by the council members. Settlement Councils can make bylaws, provided that they do not contravene any provincial law or General Council (see below) policies. Bylaws must be approved by the members of the Settlement. Settlement Councils are also responsible for determining the membership of, and land allocations within, their settlements.

Metis settlements General Council

The *Metis Settlements Act* provides for a General Council comprised of the elected councillors of all of the Metis Settlements and a four-person executive elected by the councillors.

The General Council deals with matters that affect the collective interests of the eight Settlements. It makes policies that are binding on the General Council and every Settlement. Policies are developed in consultation with the Minister of Aboriginal Affairs and Northern Development. Policies dealing with hunting, fishing, gathering and trapping must be approved by the Lieutenant-Governor in Council.

GLOSSARY

Aboriginal justice

Aboriginal peoples are indigenous or the earliest inhabitants of a country. In Canada, Indians, Inuit and Metis are together Canada's Aboriginal peoples.

Annuities are sums of money payable each year.

The process of **assimilation** is to absorb one group completely into the culture of another.

Breach is the breaking or neglect of a law, promise or duty.

Ceded is to have given up, yielded or surrendered.

Payment or reimbursement for goods or services received is **compensation.**

Cross-cultural awareness is the recognition of differences in beliefs, habits, institutions and other human endeavours considered together as being characteristic of a particular community, people or nation by other communities, peoples or nations.

The **Crown** is the power and authority of monarchs or their representatives acting in their official capacity.

Disenfranchisement is to have a right or privilege taken away.

Disposition is the act or process of getting rid of, giving away, selling etc., such as in the case of property.

Something to which a person is given a claim or right to is an **entitlement.** Treaty land entitlements are Indian claims for reserve lands that have not yet been given under the treaties.

Extinguishing Aboriginal title means governmental action that clearly intends to take away the potential ownership or interest in lands of First Nations or other Aboriginal communities.

First Nations are the Indian people and their descendents.

Indian is used to describe a group of people along with Inuit and Metis as the Aboriginal people of Canada in Sec 35(2) of the *Constitution Act, 1982*. People legally defined as Indians are known as status Indians. Status Indians can be treaty Indians or registered Indians outside treaty areas. With the exception of specific promises within a treaty, treaty Indians and registered Indians receive the same benefits and privileges from the federal government. Non-status Indians are of Indian ancestry but, through intermarriage with whites or by abandoning their status rights, have lost their legal status while retaining their Indian identity.

The ***Indian Act*** is the principal federal statute dealing with Indian status, local government and the management of reserve land and communal monies.

Inuit means "people." Known earlier as Eskimos or "eaters of raw meat," the Inuit are one of the original groups to inhabit the northern regions of Canada.

A community has **local autonomy** if it is self-governing.

Metis is a French word meaning "mixed." This term is used to describe people of mixed North American Indian and European ancestry. As used in the Constitution, "Metis" connotes membership in a Metis community, which may possess certain rights protected by law.

Mutual rights and responsibilities are just claims, titles or privileges and obligations to others party to an agreement.

Duties under the law or due to a promise, contract or agreement that are binding on both parties are **mutually binding obligations.**

To talk over and arrange terms to form a contract is **negotiated agreement.**

A **reserve** is a tract of land set apart by the Crown for the use and benefit of a band.

At the request of the federal government, which has responsibilities for educating First Nations peoples, churches created **residential schools.** Indian students had to reside at these schools for the duration of their schooling.

Self-sufficiency is the ability to supply one's own needs.

Something is **sustainable** if it is enduring, supported or upheld.

Treaties are solemn agreements between the Crown and a specific group of Indians who generally have surrendered their land rights for specified benefits from the Crown. A treaty will preserve certain rights, such as hunting and fishing rights. The Crown must uphold its honour in its treaty dealings with Indians.

Sources:

Canadian Encyclopedia, 1988. Hurtig Publishers Ltd., Edmonton.

Gage Canadian Dictionary, 1983. Gage Publishing Ltd., Toronto.

Imai, Shin, 1999. The *1999 Annotated Indian Act and Aboriginal Constitutional Provisions.* Carswell Thomson Professional Publishing, Scarborough.

Price, Richard T., 1991. *Legacy: Indian Treaty Relationships.* Plains Publishing Inc., Edmonton.

3 Aboriginal justice

Handouts and visual organizers

The handouts and visual organizers can be used to reinforce, enrich and extend the content provided in the summary and backgrounders.

HANDOUT

Treaties in Western Canada

Because they are numbered 1 to 11, the treaties are often referred to as the "Numbered Treaties." The Numbered Treaties cover Northern Ontario, Manitoba, Saskatchewan and Alberta, as well as portions of the Yukon, Northwest Territories and British Columbia.

Prairie treaties

1871 Treaties 1 and 2 are signed in southern Manitoba.
1873 Treaty 3 is signed in northwestern Ontario and part of Manitoba.
1874 Treaty 4 is signed across southern Saskatchewan, Alberta and Manitoba.
1875 Treaty 5 is signed in northern Manitoba and Saskatchewan.
1876 Treaty 6 is signed in Saskatchewan and Alberta.
1877 Treaty 7 is signed in Alberta.

Northern treaties

1899 Treaty 8 is signed in northern Alberta, British Columbia, Saskatchewan and Northwest Territories.
1905 Treaty 9 is signed in northern Ontario.
1906 Treaty 10 is signed in northern Saskatchewan and Alberta.
1921 Treaty 11 is signed in Northwest Territories.

HANDOUT

Significant land settlements in Alberta

In recent years, a number of significant settlements have been reached in Alberta.

2000: Smith's Landing First Nation received 21,500 acres of land and $31 million. The government of Alberta provided 19,000 acres of provincial Crown land and $3 million. The government of Canada provided 2,500 acres of land and $28 million.

1999: Loon River First Nation received up to 44,800 acres for a new reserve and $22 million. The government of Alberta provided the land and $7.5 million. The government of Canada provided $14,450,000. In addition, over a period of five years, the government of Canada will provide $29.5 million for capital construction on the reserve.

1998: Alexander First Nation received up to 15,140 acres of additional land and $10 million. The government of Alberta provided up to 5,140 acres of Provincial Crown Land and $3 million; the government of Canada provided $7 million.

Settlements that provide good examples of the complex issues surrounding Indian land claims include the settlements reached in Alberta regarding the Fort Chipewyan Cree Band and the Sturgeon Lake First Nation.

1986: Mikisew Cree First Nation (formerly known as the Fort Chipewyan Cree Band) received approximately 11,200 acres of reserve land and $26.6 million. Alberta provided approximately 10,000 acres of reserve land and $17.6 million. Canada provided approximately 1,200 acres of reserve land within Wood Buffalo National Park and $9 million.

1990: Sturgeon Lake First Nation received 16,207 acres of land and $5,575,000. The government of Alberta provided the land and $1,425,000. The government of Canada provided $4,150,000.

Another claim that has not yet been settled but about which there has been a significant amount written is the Lubicon Lake claim.

Lubicon land claim

Although the Lubicon Lake Band was promised a reserve by the federal government in 1939, no reserve land has ever been set aside. The Lubicon claim that they never signed away their traditional territory and were able to pursue their traditional hunting and trapping way of life until the discovery of oil in the vicinity in the late 1970s.

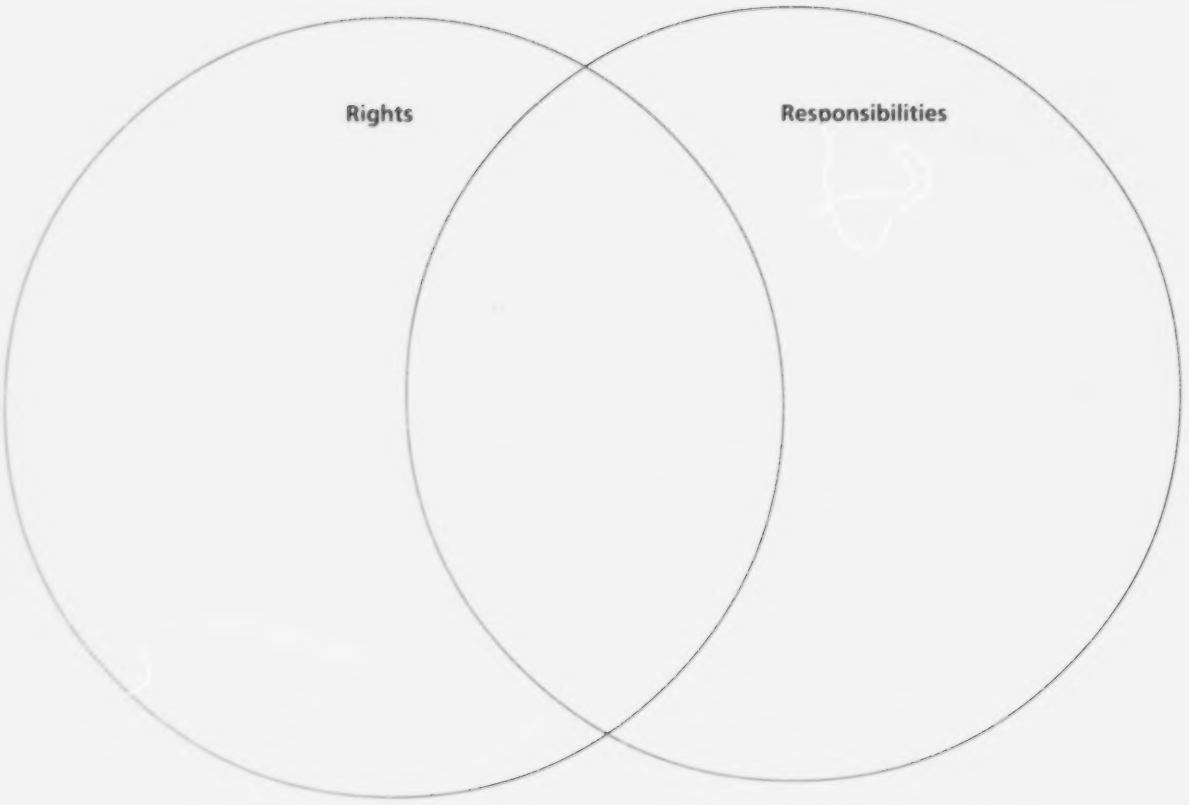
The Lubicon Band filed a Statement of Claim in the Federal Court of Canada in 1980 and in Alberta Queen's Bench in 1982. Litigation has been inactive since 1988, but attempts to reach a negotiated settlement have been unsuccessful, with negotiations having been stopped several times. The issue involves a claim to Aboriginal title over about 10,000 square kilometres of land in northern Alberta, as well as claims to reserve land and monetary damages.

In 1995 formal negotiations were once again initiated. The current round of negotiations began in 1998 and is ongoing.

What can you find out about land settlements in other provinces or territories?

VISUAL ORGANIZER

Venn diagram: Rights and responsibilities



4 Criminal justice

This thematic section can be used to teach generalizations and concepts related to the rights and responsibilities of individuals in relation to the criminal laws of Canada. The process of making laws that protect both the rights of the individual and the needs and safety of society underlies the criminal justice system. The section also addresses the rights of individuals when they are victims of crimes.

Criminal justice

The following outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada can be met through the criminal justice thematic section.

Critical and creative thinking outcomes

This thematic section encourages the development of the following critical and creative thinking skills.

Students should acquire the knowledge and skills necessary to:

- Examine the process whereby decisions affecting themselves and society are made
- Design and evaluate alternative methods of providing for the protection of human rights in society
- Examine how questions that involve the needs of the individual and the needs of the state are resolved.

Inquiry issues and questions

This thematic section supports the use of issues and questions for inquiry from the Alberta Social Studies 10 Program of Studies.

- How can citizens influence decision making by governments in Canada?
- What responsibilities does the individual have in Canadian society?

Knowledge outcomes

This thematic section develops generalizations, key understandings, concepts and related facts from the Alberta Social Studies 10 Program of Studies.

Theme I: Politics and government

The structure and functions of government in Canada are important

- Democracy
- Constitution

  Examine parliamentary democracy in Canada, including the following:

  - Functions of government (executive function; legislative function; judicial function).

Theme II: Citizen participation

Political differences are resolved through a variety of approaches

- Democratic process
- Majority and minority rights

  Identify ways of resolving differences:

  - Legal actions.

Theme III: Rights and responsibilities

Rights and responsibilities are associated with citizenship

- Rights

  Examine rights (individual and collective) in Canadian society:

  - Legal
- Freedoms
- Justice
- Equality
- Responsibilities

  Examine responsibilities in Canadian society:

  - Legal (jury duty)
  - Moral (respect for the rights of others).

There are various means that help to protect and preserve rights in Canada

- Entrenchment of rights
- Safeguarding rights

  Explain how the following help to protect human rights:

  - Courts
  - Media.

4 Criminal justice

Focus questions and activities

In this thematic section, there are three focus questions and a variety of learning activities. The focus questions and activities in the criminal justice thematic section are designed to:

- Organize the information in this thematic section around the three themes in the Alberta Social Studies 10 Program of Studies Topic B
- Involve students in critical and creative thinking activities
- Establish questions and issues for inquiry.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: **Criminal justice**
- Backgrounder: **The development of the criminal justice system**
- Websites

The Alberta Justice website at www4.gov.ab.ca/just/lawu/overmain.html and www4.gov.ab.ca/just/lawu/rolesmain.html provides information on different aspects of the criminal justice system.

For information on the history of the *Criminal Code of Canada*, go to www.law-faqs.org/nat/crimg-01.htm.

The Wilbert Coffin Case, an interesting case that provides a description of the historical context and background of capital punishment and the death penalty, can be accessed at www.canada.justice.gc.ca/en/justice2000/70mile.html.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What is the process for making decisions that affect citizens?

The historical context of criminal justice

Have students work in small groups to research the history of the criminal justice system in Canada. Ask each group to identify how the following concepts influenced the need for a criminal justice system:

- Individual rights
- Collective rights and responsibilities.

Timeline

Have students work in small groups to develop a timeline of the development of the criminal justice system in Canada. Ask each group to use information from different sources, including classroom textbooks or resources, library resources and the Internet. Each group can research various aspects of the criminal justice system, such as criminal laws, the penal system, capital punishment and victim's rights. Have groups construct their timelines using both textual and visual information.

Class discussion

Ask students to consider how change can, or should, occur by discussing the following questions:

- In your opinion, are there new laws that need to be created?
- In your opinion, are there old laws that should be changed?
- How do criminal laws change and evolve? What factors influence change in the *Criminal Code*?

Teacher preparation

These student and teacher resources support the activities below.

- Summary: **Criminal justice**
- Backgrounder: **The elements of an offence in the criminal justice system**
- Backgrounder: **The people in the criminal justice system**
- Handout: **A case in point**
- Handout: **A continuum of responsibility**
- Visual organizer: **Comparison chart**
- Process flow chart: **The process of the criminal justice system**
- Handout: **Shoplifting: Questions and answers**
- Websites

For answers to general questions about the *Criminal Code of Canada*, go to www.law-faqs.org/nat/cr-gen.htm.

For examples of ways in which the *Criminal Code* applies to issues such as shoplifting and joyriding, go to www.law-faqs.org/nat/cr-shp.htm and www.law-faqs.org/nat/cr-joy.htm.

The website of the federal Department of Justice provides information on different aspects of the legal system, including criminal justice, at http://canada.justice.gc.ca/en/dept/pub/just/index.html.

For student handouts that provide information on the criminal justice system, go to www.csc-scc.gc.ca/text/pubed/nregard/handouts_e.shtml.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How does government balance the needs of the individual with the needs of the state?

Analyzing elements of the criminal justice system

Ask students to use information on the criminal justice system to write a case study on balancing the needs of the individual with the needs of society. Have them consider:

- The facts of the story: What is the *Criminal Code of Canada*? How are individuals affected by the *Criminal Code*? How is society affected?
- The issues involved: How can the following principles of the criminal justice system be interpreted differently from the perspective of "the rights of the individual" or the perspective of "the safety of society"?
  - The act
  - Intent
  - Reasonable doubt
  - Presumption of innocence.
- The arguments: Should the perspective of the individual or of society take precedence in criminal justice proceedings?
- Decisions: Can you support your opinion with arguments?

A students' court

Work with the class to set up and conduct a students' court on a criminal issue such as shoplifting or joyriding. Have students work in small groups to develop a scenario that involves a youth issue, or use a description of an actual case. The scenario should provide details about:

- The facts of the case
- Who is involved
- The issues involved in the case.

The students' court format can be organized much like a debate. However, there is an additional role: a panel of students listens to the opposing viewpoints and makes a judgment on the issue as a judge would in a court. The students' panel can be asked to confer about their final judgment in front of the class. To conduct the students' court process, have students take on the following roles:

- A students' panel (a group of students who will listen to the facts of the issue and make a judgment)
- A group that presents one side of the issue
- A group that presents another side of the issue.

Illustrated statement

Have students create position statements that outline and defend a personal position on the effectiveness of the justice system. Have students consult various sources, such as Internet or media sources, to look for examples that support their position on the following question:

- Is the criminal justice system effective in deterring crime?

Ask students to construct their response to the question on poster paper, including written information, examples of media or Internet sources used to support their arguments, and any other illustrations they wish to use to support their statements.

Poster

Have students work with a partner to create an illustrated poster around one of the following themes:

- Crime Stoppers
- Crime prevention
- The protection of victims.

Ask each pair to ensure that the content they choose to illustrate on their posters addresses factors relating to the needs of the individual as well as the needs of the state.

Team debates

Have students work in small groups to research and prepare position statements on issues such as those listed below.

- Does the law deal effectively with violent crime?
- Do the processes involved in the criminal justice system ensure fair and equitable treatment for all citizens?
- Is justice always carried out?

Ask students to represent both sides of the debate and ensure that they have supporting information for each position to use in discussion and questioning. Have each group assign the following roles to group members. More than one student may take on each of the roles.

- Presenter (presents the argument on one side of the issue)
- Research support person (maintains supporting research using a system such as file cards, and provides information to the presenter at appropriate times during the debate)
- Recorder (keeps track of the positions and arguments used by the opposing side of the debate)
- Summarizer (develops the final concluding argument as the debate is taking place).

Organize seating at the front of the class for two debate teams, each of which will support a particular position on the issue. Have one team present a brief statement on one side of the issue and the other half present a brief statement supporting the other side. Then allow general discussion and questioning by members of the class. Have each team present a concluding argument.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: **Criminal justice**
- Backgrounder: **Rights and responsibilities within the Constitution**
- Backgrounder: **Modern issues in criminal law**
- Visual organizer: **Applying concepts**
- Handout: **This is not American television: U.S versus Canadian systems**
- Website

For a lesson plan that focuses on a criminal justice issue, with student materials that include case studies, go to www.acjnet.org/teacher/asaltsum.htm.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How are rights and responsibilities protected through the criminal justice system?

Rights and responsibilities

Have students review the concepts of rights and responsibilities. Ask them to complete a retrieval chart that compares rights and responsibilities within the criminal justice system to the *Charter of Rights and Freedoms*. Have students use the backgounder on modern issues in criminal law to compare recent actions within the criminal justice system to the *Charter of Rights and Freedoms*.

Analyzing concepts

Have students find examples in the criminal justice system that illustrate the following concepts:

- Rights
- Responsibilities
- Freedom
- Equity
- Justice.

Have students record their examples using a visual organizer, such as a concept wheel.

"This is not American television" scenarios

Have students work in small groups to develop a scenario of a situation that applies fundamental principles of the Canadian criminal justice system and another scenario that is based on the American justice system. Groups can be asked to use additional sources of information, such as the Internet, classroom textbook resources and the media, to obtain more information on the Canadian and American criminal justice systems. Students can be encouraged to use examples of current or past cases from either country's systems. Have them present their scenarios to other groups or the entire class.

Media search

Ask students to individually look for examples of articles in the media that relate to current cases in the criminal justice system. Have students use their articles to discuss the following questions:

- What rights are reflected in these examples?
- What aspects of the criminal justice system do these examples represent?

Guest speakers

Work with students to develop a list of speakers to invite into the classroom to provide additional information or perspectives on the criminal justice system. The list might include individuals who are involved with the criminal justice system such as judges, prosecutors and defence counsel. Have each student work with a partner to research contact information for potential speakers and develop an invitation to speak to the class that includes:

- The purpose of the request
- The topics or issues being studied
- The information students are interested in.

Work with students to contact the guest speaker and present the invitation.

Making comparisons

Have students, individually or in small groups, research how the rights and responsibilities of citizens of other countries are protected through criminal justice systems. Have them use classroom resources and textbooks, library sources or the Internet to examine criminal laws. Have students share their findings.

4 Criminal justice

Summary, backgrounders and glossary

The summary, backgrounders and glossary provide information about criminal justice and can be used in a variety of ways:

- The summary of key content provides a synthesis and advance organizer for the information in the thematic section. The summary can be used as an introduction to the section, a review of key content or an overview of the theme for class or group activities.
- The backgrounders provide information on different aspects of the judicial system. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study and critical thinking development.
- The glossary lists key terms and definitions. These terms appear in bold type throughout the summary and backgrounders.

SUMMARY

Criminal justice

The development of the criminal justice system

Historical context

- The *British North America Act, 1867* (now the *Constitution Act, 1867*) gave the federal Parliament control over "the criminal law, including procedure in criminal matters." It gave the provinces power to make laws concerning the "administration of justice" within the province.

The elements of an offence in the criminal justice system

Elements of an offence

- All offences contain two components, the act itself and the intention behind the act.
- The act or **omission** is one component of the offence.
- The second component of every crime is the mental element, or **intent**.

Reasonable doubt and the presumption of innocence

- The most important principle of our criminal justice system is the **presumption of innocence.**
- The prosecution must prove beyond a **reasonable doubt** that the accused committed the offence with which he or she is charged.
- The **burden** of truth is on the prosecution at the beginning of the trial and continues until the end.

▲ TRUTH

▲ BEYOND REASONABLE DOUBT

▲ BALANCE OF PROBABILITIES

▲ REASONABLE AND PROBABLE GROUNDS

▲ REASONABLE SUSPICION

▲ MERE SUSPICION / HUNCH

The people in the criminal justice system

Provincial and federal courts

- Canada's Constitution creates two different court structures, federal and provincial.
- Provincial courts
  - Are created by each provincial government through specific legislation
  - Have only the powers granted to them by Parliament or a legislature.
- Federal courts
  - Have different jurisdiction from provincial courts
  - Include the highest court in the country, the Supreme Court of Canada.

Canadian military law

- Since 1868 various statutes have made it clear that members of Canada's armed forces are subject to ordinary laws that apply to all citizens and to the jurisdiction of the country's courts.
- By joining the military, however, they subject themselves to additional liabilities and responsibilities under Canadian military law. The *National Defence Act* is the governing statute of the Canadian Forces.
- The purpose of military law is to promote good order and a strict disciplinary standard within services by providing prosecution of military personnel determined to have contravened the law of regulations.

Judges

- The judiciary applies the laws that are made by the Executive and Legislative branches of government.
- The judiciary is protected from interference by the principle of "judicial independence."

Prosecutors

- A Crown prosecutor is a lawyer who is authorized to represent the Crown; i.e., the state, before all courts in relation to the prosecution of offences.
- It is ultimately the Crown prosecutor who decides what charges will be prosecuted in court and who subsequently conducts the prosecution.
- In deciding what charges will proceed, the Crown prosecutor must consider whether or not, based on the evidence, there is a reasonable likelihood of conviction, and whether or not prosecution is in the public interest.

Defence counsel

- Defence counsel (lawyers acting for the accused) must sift through the evidence and the law to find any defence available to an accused person.

  A variety of factors influence the defence:
  - Laws as provided in the *Criminal Code*
  - Unwritten common law about defences, evidence and procedure
  - The *Charter of Rights and Freedoms*
  - All of the decisions from courts, which come out every day.

The jury

- The judge is the master of the law; the jury is the master of the facts.
- The judge instructs the jury on the law and how they must apply the facts to that law.
- The judge may accept all, some or none of a witness's evidence.
- The jury decides whether all of the elements of the offence have been proven by the **Crown**.
- The jury must feel absolutely free to express their opinions while deliberating (**jury secrecy**).

Rights and responsibilities within the Constitution

- In 1982 the Canadian *Charter of Rights and Freedoms* became the supreme law of Canada.
- All laws, whether federal, provincial or municipal, must be consistent with the *Charter*.
- The *Charter* is worded in general terms. It is up to the courts and our elected officials to interpret and apply its principles as the need arises.

Section 1: Reasonable limit

- When a law violates the *Charter*, it is not automatically struck down.
- The Crown has the opportunity to defend the law and prove to the Court that the particular law is a reasonable limit that is demonstrably justified in a free and democratic society.

Section 7: Fundamental justice

- Any provision that denies an accused person a full and fair defence would violate fundamental justice rights.

Section 8: Search and seizure

- Prior to the *Charter*, almost any evidence relevant to the charge was admissible in court, no matter how it came into the possession of the police.
- Section 8 changes that situation radically, in that it protects against unreasonable **search and seizure.**

Section 9: Arbitrary detention

- Section 9 prevents police from stopping, arresting or detaining people when they do not have justification to do so.
- CheckStops were challenged as violating this section; it was held that they are an arbitrary stop.

Section 10: The right to counsel

- Section 10(b) simply says that everyone who is detained has the right to retain and instruct counsel and to be informed of that right.

Section 11: Trial rights

- Section 11 contains a variety of provisions aimed specifically at protecting the rights of a person who is charged with an offence.

Section 24(1): Other remedies

- The most drastic remedy a court can impose is a "**stay of proceedings.**"
- When this is ordered, the prosecution is ended. It is the same as if the accused had never been charged. However, the Crown (prosecutor) can reactivate the charge within one year.
- There is also a "judicial stay." In these cases, it is as if the accused had been acquitted. The charge may not be reactivated except by a higher court.

Section 24 (2): Evidence

- Under Subsection (1), if a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by the *Charter*, the evidence shall be excluded.
- If a government gets evidence through an unreasonable search or seizure (Section 8), then a court may order that the evidence not be used in court.
- A court will only make an order of this kind if use of the evidence "would bring the administration of justice into disrepute."

Modern issues in criminal law

Victim's rights

- Victim Impact Statements were created by the *Criminal Code* in 1995.
- Parliament acknowledged that sometimes there is no way for a prosecutor to step into the shoes of the victim and express the impact that the crime had on that person's life.
- Parliament made it clear, by law, that victims have a right to let the sentencing judge know about the effect of the crime, and the judge must receive that statement from the victim.

Restorative justice

- The aim of restorative justice initiatives is to get offenders to accept responsibility for their conduct and work towards righting the wrong.
- There is emphasis on face-to-face meetings, with each party having an opportunity to talk about the crime from his or her perspective.

Aboriginal justice issues

- The percentage of Aboriginal people who make up the prison population is much higher than the percentage of Aboriginal people in the Canadian population.
- Parliament added this section to the *Criminal Code*: "A court that imposes a sentence shall also take into consideration that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."
- The most often cited reason for the overrepresentation of Aboriginal people in the justice system is that the western justice system is incompatible with traditional Aboriginal peacemaking processes.
- The role of sentencing circles is important to this perspective because sentencing circles are seen as one way to redress this imbalance.
- Sentencing circles are usually community-based initiatives that involve a cross-section of community members including, at times, friends and family of the offender. Sentencing circles are very similar to the victim-offender conference.
- It is thought that the consensus-based approach better serves the community because if the solution or sentence is worked at until the offender agrees, then it is believed that the offender will be more likely to comply with whatever conditions are set.

Criminal records and pardons

- A criminal record may prevent a person from obtaining employment because of the need for trust or the inherent travel difficulties that a record causes, or for other reasons.
- The law has long recognized the benefit in eventually forgiving a person for having committed a crime if that person has demonstrated that he or she is reformed.

BACKGROUNDER

The development of the criminal justice system

A history of the criminal justice system

How is the criminal justice system founded in constitutional law?

When Canada was formed in 1867, the *British North America Act, 1867* (now the *Constitution Act, 1867*), gave the federal Parliament control over "the criminal law, including procedure in criminal matters." It gave the provinces power to make laws concerning the "administration of justice" within the province.

What is the *Criminal Code of Canada*?

In 1892, Canada's Parliament unveiled the first homemade statement of the criminal law, the *Criminal Code of Canada*. The *Criminal Code* is the legislation that sets out the crimes, defences, principles and procedures that are used by the courts in dispensing justice. In 1955, a provision was added to the *Code* to make it the exclusive source of criminal offences. Until then, common law offences were recognized by the law but not actually written in legislation, for example, contempt of court and conspiracy.

Of course, not all offences are contained in the *Criminal Code*. There are hundreds of **federal statutes**, and most (if not all) of them make it an offence to do one thing or another. The *Income Tax Act* makes it an offence not to pay taxes, the *Aeronautics Act* makes it an offence to operate an airplane without a license and so on. But the criminal law is different. There is a stigma attached to being convicted of a "crime."

Crimes involve **moral culpability**. They are acts or **omissions** that our society has prohibited because they are "wrong." Offences from other *Acts*, like tax evasion, may have just as serious consequences in terms of sentencing, but they do not produce a criminal record. Narcotics offences are the exception to this general rule. Parliament has a separate statute that criminalizes drug offences: the *Controlled Drug and Substances Act*.

BACKGROUNDER

The elements of an offence in the criminal justice system

Elements of an offence

Explain what is meant by the two components of offences.

All offences contain two components: the act itself and the intention behind the act.

The act

Give two examples of omissions and intent under the law.

The act or **omission** is one component of the offence. The legal phrase describing this is the Latin *actus reus*. No one can be convicted of a crime unless it is proved that he or she did a prohibited act or failed to comply with a legal duty or obligation.

It is forbidden to do certain acts in a civilized society. Stealing, killing or drunk driving will get you in trouble with the law. Similarly, where the law imposes a duty on a person to do certain things, it is forbidden to not do them. These are called "omissions." For instance, parents are under a legal duty to feed their children and keep them safe from harm. Failure to do so is a crime under Section 215 and is subject to a maximum period of two years in jail.

The mental element

A judge might tell you, "Ignorance of the law is not a defence. Citizens have a certain responsibility to know the laws of the land." Do you agree or disagree? On what basis would you defend your position?

The second component of every crime is the mental element, referred to as **intent.** The legal phrase describing this is the Latin *mens rea*.

Suppose a person who is walking down the street trips on a crack in the sidewalk, falls and breaks a shop window on the way down. Under the criminal law that person cannot be considered guilty of the offence of damaging property ("Mischief," Section 430). There was no intention to break a window. The person's mind was never directed towards that result. It was an accident, and the law does not punish the morally innocent.

On the other hand, intention does not mean the same thing as "deliberate." A person can be held criminally responsible for being reckless or for "turning a blind eye."

All crimes contain the two elements of *actus reus* and *mens rea*. Any offences that may cause a person to be sent to jail contain these two elements. However, other offences like speeding are different. If you are caught speeding, it is not a defence to say that you didn't realize how fast you were going or that you didn't mean to speed. These sorts of offences are regulatory, and for some of them it is enough that you committed the act.

Reasonable doubt and the presumption of innocence

The Supreme Court of Canada has recently commented on reasonable doubt and the presumption of innocence, saying, "The two concepts are forever linked and they must be presented together as a unit." What does this mean in a criminal trial?

Perhaps the most important principle of our criminal justice system is the **presumption of innocence**. The prosecution must prove beyond a **reasonable doubt** that the accused committed the offence that he or she is charged with. The **burden of truth** is on the prosecution at the beginning of the trial and continues until the end.

The Supreme Court of Canada has recently commented on reasonable doubt and the presumption of innocence, saying, "The two concepts are forever linked and they must be presented together as a unit." The court made some specific observations in defining these principles:

- A reasonable doubt is a doubt based on reason and common sense. It must be logically based upon the evidence or lack of evidence.
- A reasonable doubt cannot be based on sympathy or prejudice.
- A judge or jury must realize that the prosecution is not required to prove its case to an absolute certainty. Such an unrealistically high standard could seldom be achieved. The test is not proof beyond any doubt.

BACKGROUNDER

The people in the criminal justice system

Provincial and federal courts

Canada's Constitution creates two different levels of courts, federal and provincial. The provincial courts are created by each provincial government through specific legislation. Judges of Alberta's Provincial Court are appointed by the provincial Minister of Justice after consultation and advice from the community and the legal profession. Most trials take place in Provincial Court.

Discuss the differences between provincial courts and the Supreme Court of Canada. How do these differences reflect the roles, functions and responsibilities of federal and provincial governments?

The Alberta Provincial Court also has separate units for traffic and youth matters. In some cities a Justice of the Peace presides over the Traffic Court. A Justice of the Peace holds less authority than does a Provincial Court Judge and does not have jurisdiction to hear a criminal trial. Youth Court Judges are Provincial Court Judges who are assigned to Youth Court. All Provincial Judges are Youth Judges, but they have that title only when they are actually sitting in Youth Court.

The Provincial Court Judges have, with few exceptions, only the powers granted to them by Parliament or a legislature. The federal courts have different jurisdiction from the provincial courts. A judge of a federal court is referred to as a "Justice." These courts have different names in the different provinces. In Alberta, Saskatchewan and Manitoba, the federal criminal court is the Court of Queen's Bench. In British Columbia, the federal criminal court is the B.C. Supreme Court. In Ontario, it is the Superior Court of Justice.

The Court of Appeal of Alberta is the highest appeal court in the province. The Chief Justice of Alberta and 12 other justices preside over this court. The Court of Appeal hears most civil and criminal appeals, and also hears applications and appeals respecting certain judgments, orders and decisions of the other courts.

The highest court in the country is the Supreme Court of Canada. Based in Ottawa, the Supreme Court of Canada is composed of nine Justices representing the various regions of Canada. Currently, the Chief Justice is Beverly McLaughlin. Five, seven or nine Justices will comprise a Panel to hear an appeal and the majority's decision will determine the matter. They have the final decision on any criminal matter in Canada after the case has gone through all other courts and appeal courts. The Supreme Court does not always hear cases. They may deny a hearing.

Canadian military law

How does the military justice system uphold the principles of equity and fairness? What effect does the military justice system have on the rights of Canadian citizens?

Since 1868 various statutes have made it clear that members of Canada's armed forces are subject to ordinary laws that apply to all citizens and to the jurisdiction of the country's courts. By joining the military, however, they subject themselves to additional liabilities and responsibilities under Canadian military law. The *National Defence Act* is the governing statute of the Canadian Forces.

The purpose of military law is to promote good order and a strict disciplinary standard within services by providing prosecution of military personnel determined to have contravened the law of regulations. The importance of strict discipline for any military organization is a principle that has long been supported by government and judges.

The *National Defence Act* contains the *Code of Service Discipline* that creates specific military offences. There are both strict disciplinary matters (such as insubordination or failure to properly carry out orders) and offences that mix disciplinary matters with criminal acts (such as striking an officer). Subsection 139(1) of the *National Defence Act* outlines the scale of punishments for service offences. The following offences are listed in order of severity.

- Imprisonment for life
- Imprisonment for two years or more
- Dismissal with disgrace from Her Majesty's service
- Imprisonment for less than two years
- Dismissal from Her Majesty's service
- Detention
- Reduction in rank
- Forfeiture of seniority
- Severe reprimand
- Reprimand
- Fine
- Minor punishments.

Section 130 of the *National Defence Act* incorporates, as part of the *Code of Service Discipline*, essentially all offences punishable under any federal statute, including the *Criminal Code*.

A military court will not try offences such as murder, manslaughter and abduction of a minor if they are committed in Canada. If they are committed outside of Canada by a member of the military, then a military court will hear the charge.

There are four types of court martial within the Canadian Forces:

- General Court Martial
- Disciplinary Court Martial
- Standing Court Martial
- Special General Court Martial.

The General Court Martial has jurisdiction to try any person in the military, including a civilian, who is charged with a service offence. The General Court Martial consists of a military judge and a panel of five officers. The senior member of the court must be an officer of or above the rank of colonel. The judge and officers system is similar to a judge and jury system in the non-military court. The military judge makes decisions of a legal nature and the panel makes findings of fact.

The Disciplinary Court Martial may try any officer of or below the rank of major or any non-commissioned member who is charged with a service offence. The Disciplinary Court Martial is composed of a military judge and a panel of three members. The senior member of the court must be a major or of higher rank. This court cannot impose a punishment greater than dismissal with disgrace.

The Standing Court Martial may try any officer or non-commissioned member who is charged with a service offence. The Standing Court Martial consists of a military judge sitting alone. The court cannot impose a punishment greater than dismissal with disgrace.

The Special General Court Martial may try any person, other than an officer or non-commissioned member, who is liable to be charged with a service offence. In other words, the Special General Court Martial may only try a civilian. The court is composed of a military judge sitting alone. The court may only pass a sentence that includes a punishment of imprisonment or fine.

The Court Martial Appeal Court of Canada hears appeals from any court martial. The Court is outside the military system and is, instead, a civil court composed of judges from other federal courts.

Excerpts from the Court Martial Appeal Court of Canada's website at www.cmac-cacm.ca.

Judges

There are three branches of government in Canada, the Executive, the Legislative and the Judiciary. The Judiciary applies the laws that are made by the other two branches. They are protected from interference by the principle of "judicial independence." It is crucial to any legitimate democracy that elected officials not be allowed to impose their political will on the courts' determination of guilt or innocence. For example, government ministers do not make public comment on a case that is before the courts so that there can be no suggestion that they are trying to influence the decision.

"Justice must not only be done, it must be seen to be done." Explain what this means and why it is important in Canada's justice system.

A judge must always maintain a position of objectivity when hearing any matter. If the judge cannot remain neutral, he or she is duty-bound to disqualify himself or herself. The well-known expression, "Justice must not only be done, it must be seen to be done" is particularly important with regard to the position of a judge. Even if the judge is convinced that there is no **bias** one way or another, the real determination is, "What would the average observer think?" So when recently appointed judges have former clients appear before them, they must disqualify themselves even if they are perfectly able to be dispassionate and objective.

Prosecutors

A Crown prosecutor is a lawyer who is authorized to represent the Crown (i.e., the state) before all courts in relation to the prosecution of offences. While police and other enforcement agencies investigate wrongdoing, it is ultimately the Crown prosecutor who decides what charges will be prosecuted in court and who subsequently conducts the prosecution. In deciding what charges will proceed, the Crown prosecutor must consider, based on the evidence, whether or not there is a reasonable likelihood of conviction and whether or not prosecution is in the public interest. Other responsibilities of the Crown prosecutor include dealing with defence counsel in terms of disclosure and issue resolution, interviewing victims and witnesses, general case preparation, and conducting arraignments, preliminary inquiries, trials and sentencing hearings.

What factors influence the prosecution and the defence in a criminal trial?

Defence counsel

How does the role of the defence counsel uphold the principles of democracy and the Canadian constitution?

The importance of defence counsel in the criminal justice process cannot be underestimated. Modern Canadian criminal law is exceedingly complex. A variety of factors influence the defence:

- Laws as provided in the *Criminal Code*
- Unwritten common law about defences, evidence and procedure
- The *Charter of Rights and Freedoms*
- All of the decisions from courts, which come out every day.

When a person is charged with a crime, any one or more of these components could provide a defence to the charge. Defence counsel (lawyers acting for the accused) must sift through the evidence and the law to find any defence available to an accused person.

Some people ask the question of defence counsel, "How can you defend a person charged with such a crime?" There are a number of responses to this.

First, without legal training and experience an accused person cannot properly defend himself or herself. Fairness requires that he or she have legal representation to ensure that a full defence is received. There is a very strong public interest in ensuring that only guilty people are convicted, and that the innocent are acquitted.

Second, in most cases the defence lawyer's primary function is to ensure that the Crown has proven its case and met its legal burden. A defense lawyer attempts to point out to the judge that the Crown did not prove, for instance, that the offence occurred at the time or place alleged in the charge.

Similarly, the defence counsel's cross-examination of a witness is a fundamental function of the trial. This is a test of the witness's ability to recall and recount. Witnesses may honestly attempt to relate the events to the best of their recollection, but not appreciate the faults in their memory.

While the prosecutor is obliged to put forward relevant evidence, whether it helps or hurts the case for the Crown, defence counsel owes responsibility only to the accused. The defence lawyer is integral in keeping the **presumption of innocence** and **burden of proof** from becoming inconsequential.

The jury

Why does the Canadian criminal process use a jury system?

What is the difference between trial by judge or jury? How is this distinction important in the protection of individual rights?

History is plagued with systems of justice that were anything but just. The jury was seen as a way to bring fairness to the criminal process. An accused would be judged, not by a member of the elite class who was perhaps removed from the day-to-day knowledge of the accused's circumstances, but by members of his or her own community. Twelve members of the community would be randomly chosen and their impartiality tested when appropriate. They would determine whether the facts justified a conviction based on the law as explained to them by the judge.

This separation of judge and jury is important. The judge is the master of the law; the jury is the master of the facts. The judge instructs the jury on the law and how they must apply the facts to that law. The jury may accept all, some or none of a witness's evidence. They decide whether all of the elements of the offence have been proven by the **Crown**.

The separation of fact and law often requires juries to miss large portions of the trial. If either the Crown or defence has an issue of law that needs to be determined, for instance the admissibility of some evidence, it is decided in the jury's absence. The judge hears the evidence and decides whether the law allows it to go to the jury.

One of the most fundamental principles of Canadian criminal law is **jury secrecy.** The members of a jury must feel absolutely free to express their opinions while deliberating. The law attempts to protect this freedom by making it a serious criminal offence for anyone to disclose what happens in jury deliberations. The goal is to encourage jurors to say what they really feel and to come to the conclusion that they honestly believe in rather than caving in to other pressures. A jury's verdict must be unanimous, whether it is "guilty" or "not guilty." When a jury cannot agree, it is said to be "hung." At that point the judge declares a mistrial and the Crown must decide whether to commence a new prosecution.

BACKGROUNDER

Rights and responsibilities within the Constitution

The *Charter of Rights and Freedoms*

Why is the *Charter of Rights and Freedoms* important in the criminal justice system?

In 1982 the *Canadian Charter of Rights and Freedoms* became the supreme law of Canada. All laws, whether federal, provincial or municipal, must be consistent with it. The *Charter* is worded in general terms. It is up to the courts and our elected officials to interpret and apply its principles as the need arises.

The criminal law was particularly affected by the enactment of the *Charter*. Every aspect of a police investigation and the prosecution must comply with it. If there is a violation, the *Charter* allows a court to take appropriate action.

Some sections of the *Charter* have little application to the criminal law (i.e., Section 3, the right to vote). Others have had monumental impact (i.e., Section 10, the right to counsel). The following sections of the *Charter* have been important in reshaping the Canadian criminal justice system.

Section 1: Reasonable limit

When a law violates the *Charter*, it is not automatically struck down. The Crown has the opportunity to defend the law and prove to the Court that the particular law is a reasonable limit that is demonstrably justified in a free and democratic society. This requires the Crown to justify why it is important for the law to exist, even though it violates rights, and that the law violates the rights as little as possible.

Are there ever instances where it is justifiable to violate individual rights? Why or why not?

Examples of laws that have been scrutinized under Section 1 include:

- Roadside alcohol breath tests violate the right to counsel but are permitted since they are not very intrusive and are an effective tool in countering the carnage caused by drunk drivers.
- Provisions making it illegal to distribute hate propaganda violate the right to freedom of expression but are permissible as a reasonable limit.
- A mandatory seven-year minimum sentence for trafficking cocaine violated the provision against cruel and unusual punishment and could not be justified as a reasonable limit.

Section 7: Fundamental justice

This section is very broadly worded and therefore has effect over a great number of areas:

- Any provision that denies an accused person a full and fair defence violates fundamental justice rights.
- A law so vague that an average person would not be able to comprehend its scope violates fundamental justice.
- It would be unconstitutional to have criminal law that allows for the conviction of an accused even where there is a reasonable doubt or where the Crown does not have to prove the accused's intent.

How does the principle of fairness apply to the criminal justice system? For example, why would it be considered unfair or unjust to have the police decide what evidence could be withheld from an accused?

One of the most significant implications of Section 7 has been the articulation of the Crown's disclosure obligation. Before the *Charter*, the Crown could decide how much of its file to show to the defence prior to the trial. Police could withhold information, and the accused would show up for trial facing witnesses and evidence with no notice or preparation. The Supreme Court of Canada ruled that it was fundamentally unfair for an accused to face trial by ambush. It is now a constitutionally protected right that the accused shall receive all information that the Crown has in its possession that is relevant to the charge, whether it helps or harms the case for the prosecution. The right to disclosure has been considered by the various courts in numerous cases as judges are asked to decide what an accused is, and is not, entitled to. For instance, the courts have recognized that sexual assault victims have privacy rights that may be even more important than the right of the accused to disclosure. Accused persons cannot automatically have access to victims' counseling records and diaries.

Section 7 also embodies the right to remain silent and the right not to be forced to **incriminate** oneself.

Section 8: Search and seizure

What individual rights does Section 8 of the *Charter of Rights and Freedoms* protect?

Prior to the *Charter*, almost any evidence relevant to the charge was admissible in court, no matter how it came into the possession of the police. Section 8 changes that situation radically, in that it protects against unreasonable **search and seizure**. Now, police must have lawful authority to start a search and to seize property. If a person has a "reasonable expectation of privacy," the police cannot violate that privacy arbitrarily. Often that means they have to go before a judge and get a **warrant** of some kind. An independent judicial officer determines whether the police have reasonable and probable grounds to justify the intrusion. Other times the traditional common law right is enough, such as when police frisk a person they have arrested.

Section 9: Arbitrary detention

Why is arbitrary detention not permitted under the *Charter of Rights and Freedoms*?

The "liberty of the subject" is a formal way of describing a person's right to be free. It is always a serious matter when an authority of the state interferes with a person who is peacefully going about his or her business.

Section 9 prevents police from stopping, arresting or detaining people when they do not have justification to do so. CheckStops were challenged as violating this section, and it was held that they are an arbitrary stop. However, they are permissible under Section 1.

Section 10: The right to counsel

"Section 10 may be the section of the *Charter* which has generated the most legal debate and analysis." Discuss why Section 10 has generated controversy and discussion.

Section 10 may be the section of the *Charter* that has generated the most legal debate and analysis. Section 10(b) simply says that everyone who is detained has the right to retain and instruct counsel and to be informed of that right. Thousands of cases have interpreted these seemingly straightforward words and expanded them into a complex set of obligations on police officers.

Why do you think it is important to be able to "retain and instruct counsel without delay"?

The exact wording used by most police departments in Alberta is, "You have the right to retain and instruct counsel without delay. This means that you may call your own lawyer or get free advice from duty counsel immediately. If you are charged with an offence, you may apply to **Legal Aid** for assistance. Do you understand? Do you want to call a lawyer?"

A person is detained when his or her liberty is impeded by police. It may be actual physical detention or a psychological situation; i.e., "I didn't think I had a choice." In most cases, the police have to tell a person who is detained that he or she can call a lawyer. The police must let the person know about this right immediately and that there are free lawyers available to provide advice. The police must provide an opportunity for the person to call a lawyer if the person chooses to do so. The person may call the lawyer of his or her choice, within reason. The person is entitled to talk to his or her lawyer in private. If the person decides not to call a lawyer, the police officer has to ensure that the person understands what he or she is giving up.

Section 11: Trial rights

For what reason must trials be held within "reasonable" time periods? How would you define a reasonable time period?

Section 11 contains a variety of provisions aimed specifically at protecting the rights of a person who is charged with an offence.

Section 11(b) contains the right to a trial within a reasonable time. It does not say a "speedy" trial, but instead recognizes that some trials take longer to get to than others. Section 11(b) does not prevent police from laying charges years (or even decades) after a crime is detected. It is aimed at the time that follows the charge being laid. The section recognizes the tremendous stress placed upon an accused person while he or she waits for a trial.

In 1990 the Supreme Court of Canada issued the first comprehensive judgment on what this right entails. The result was dramatic. Approximately 10,000 charges were dropped by the Crown in Ontario alone, simply because too much time had already passed or because the backlog was so severe that unreasonable delay was inevitable. After that, the Supreme Court refined its ruling and made it clear that they recognized delay as part of the system. Now, even if a case has been before the courts for a long period of time, the accused's right will not be violated if the delay can be explained and is reasonable.

Section 11(d) sets out the presumption of innocence as a constitutionally protected right and ensures the right to a "fair and public hearing." Courts have linked Sections 11(d) and 7 together since their protections tend to overlap.

Section 11(h) contains the "**double jeopardy**" protection that prohibits the Crown from charging a person with an offence when that person has already been convicted or acquitted of the same offence.

Section 24(1): Other remedies

The most drastic remedy a court can impose is a **stay of proceedings.** When this is ordered, the prosecution is ended. It is the same as if the accused had never been charged. However, the Crown (prosecutor) can reactivate the charge within one year. This is the more common form of a stay of proceedings. Less common is a "judicial stay" where the court enters a "stay of proceedings." In these cases, it is as if the accused had been acquitted. The charge may not be reactivated except by a higher court.

A judicial stay of proceedings can only be ordered when there is nothing else the court could do to address the *Charter* breach. It must be one of the "clearest of cases," meaning that the judge has to be convinced that the public would not want the accused to be put to trial because the violation has made the prosecution look extremely bad, or has made it extremely difficult (or impossible) for the accused to properly defend himself or herself.

Section 24 (2): Evidence

If the court finds that evidence was obtained by, or because of, a *Charter* violation, the evidence may still be admissible. The court will consider whether allowing this evidence into the trial will bring the administration of justice into disrepute. In other words, would people think it unfair and wrong for the prosecution to be able to use this evidence? Sometimes this violation is so technical that more harm would be done by keeping the evidence out.

Victim's rights

How are the rights of the accused protected? Why are people concerned with victim's rights?

The introduction of the *Charter* placed the focus on the rights of the accused. Many cases were dismissed by the courts because of **non-compliance** with one or more of the accused's rights. As these became public, a groundswell of resentment began to develop. Lobby groups and politicians loudly made the point that there was another interested party in the courtroom – the victim – and that the victim also had rights. The various governments heard these complaints and tried to enact legislation that would address some of the victims' concerns without compromising the rights of the accused. Since all legislation must comply with the *Charter*, a law that tries to undo a *Charter*-protected right will not survive a challenge.

The focus on victim's rights in the context of criminal law has been on giving victims a voice in the process and ensuring that their voice is heard. There have also been specific amendments made to legislation in an attempt to mend as much of the harm done by the crime as possible through restitution.

If you were a victim, why might you want to make a statement in court about the impact of a crime that affected you?

Victim Impact Statements were created by the *Criminal Code* in 1995. Previously, a sentencing judge would often refuse to hear from the victim, relying exclusively on the prosecutor to describe the consequences of the crime. Parliament acknowledged that sometimes there is no way for a prosecutor to step into the shoes of the victim and express the impact that the crime had on that person's life. Parliament made it clear, by law, that victims have a right to let the sentencing judge know about the effect of the crime, and the judge must receive that statement from the victim. In 2000, the *Code* was amended so that victims now have the right to speak directly to the judge instead of writing the statement. Judges are obligated to ensure that the victims know they have this right and to give the victims a reasonable opportunity to attend the court and present their statement.

Discuss the rights provided by the *Victims of Crime Act*.

Alberta, like many other provinces, has recognized the role of the victim in criminal prosecution. The *Victims of Crime Act* gives victims certain rights to access information and guarantees that they will be kept advised of pertinent information as the charge proceeds through the justice system.

The *Victims of Crime Act* also established a fund that can be used to assist people who have been financially harmed by a criminal offence. This mirrors a federal program that establishes programs and facilities for victims of crime. The federal program is funded by money collected directly from offenders. When they are sentenced, a judge is required to levy a "victim fine surcharge." Surcharges cannot be worked off on the fine option program.

Over the years, victims have been offered protection and consideration in the actual procedures used in trials. In some cases a victim may testify behind a screen or via video in order to remain separated from the accused. Furthermore, there are provisions that do not allow a person charged with a sex offence to personally cross-examine the complainant. The court was given specific authority to protect the victim from this traumatic experience by appointing independent counsel to conduct the cross-examination.

Restorative justice

Discuss what the practice of restorative justice means.

Restorative justice is a fresh approach to criminal law that places more emphasis on healing the harm caused by the offence, rather than punishing the offender. It provides the victim and the community with a very meaningful role in the process.

How does restorative justice address the concept of responsibility?

The aim of restorative justice initiatives is to get offenders to accept responsibility for their conduct and work towards righting the wrong. There is emphasis on face-to-face meetings, with each party having an opportunity to talk about the crime from his or her perspective. This meeting helps the offender, the victim and the representatives of the community to understand why this happened, why it is such a bad thing, and prevent its reoccurrence. The meeting concludes with an agreement outlining how the offender will make amends. Amends can include financial consideration, service to the victim, community service or any other outcome agreed upon by the parties. This agreement is specifically individualized to accommodate the circumstances of the offender and the victim.

Because of the need for cooperation and openness, restorative justice is available only when an offender is prepared to accept responsibility for his or her actions. Furthermore, for more serious offences, the agreement between the offender and the victim may be only part of the sentence; a period of **incarceration** may still be required in addition.

Aboriginal justice issues

"All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders." How has the Canadian criminal justice system changed to protect the rights of Aboriginal peoples?

The percentage of Aboriginal people who make up the prison population is much higher than the percentage of Aboriginal people in the Canadian population.

Parliament recognized this and added this section to the *Criminal Code*: "A court that imposes a sentence shall also take into consideration that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."

The most often cited reason for the overrepresentation of Aboriginal people in the justice system is that the western justice system is incompatible with traditional Aboriginal peacemaking processes. The role of sentencing circles is important to this perspective because sentencing circles are seen as one way to redress this imbalance.

Sentencing circles reflect the more traditional Aboriginal processes. These processes emphasize the rights of the community over the rights of the individual, guidance from elders, inclusion of spirituality, a preference for consensus-based decision making rather than majority decision and the presence of rehabilitation and restitution rather than a focus on punishment. An Aboriginal offender is entitled to place evidence before the court that will perhaps provide an explanation for the conduct, or provide a suitable alternative to incarceration.

These processes are present in sentencing circles because they are usually community-based initiatives that involve a cross-section of community members including, at times, friends and family of the offender. Sentencing circles are very similar to the victim-offender conference.

It is thought that the consensus-based approach better serves the community because if the solution or sentence is worked at until the offender agrees, then it is believed that the offender will be more likely to comply with whatever conditions are set. The influence of the community is also present because there are a number of people from the community who are aware of the conditions and so are able to monitor the progress or completion of the conditions. The rehabilitation aspect of sentencing circles is viewed as beneficial for both the community and the offender. The sentences put forth by sentencing circles can be viewed as multi-party agreements, involving the victim, the offender, the parents and or family, elders, police, court workers, social workers, counsellors, and the judge.

Criminal records and pardons

Do you agree that pardons are an effective component of the criminal justice system? Why or why not?

Since society is more competitive than ever, any blemish on a person's history can have serious consequence for his or her success. A criminal record may prevent a person from obtaining employment because of the need for trust or the travel difficulties that a record causes, or for other reasons.

The law has long recognized the benefit in eventually forgiving a person for having committed a crime if that person has demonstrated that he or she is reformed. This ancient power of **clemency** has been retained in modern times and is now **embodied** in the granting of a pardon.

Discuss the procedure followed before a pardon is granted.

The *Criminal Records Act* is federal legislation that provides, among other things, for pardons from criminal records. A person may apply for a pardon five years after the sentence is completed in respect of an indictable offence or three years after a **summary conviction offence**.

The application goes to the National Parole Board for consideration. The applicant cannot have been convicted of a federal offence during that period of time and must have been of "good conduct." The Act requires the Board to "make inquiries" into the conduct of the applicant to ensure that the pardon is deserved. These inquiries may result in investigators speaking to friends, family and associates of the applicant.

If the pardon is granted, the criminal record is removed from the regular database so that the conviction will "no longer adversely reflect on the applicant's character." The pardon can be revoked if the applicant is subsequently convicted of a summary conviction offence or is no longer of good conduct. The pardon is automatically revoked if the applicant is convicted of an indictable offence.

GLOSSARY

Criminal justice

Bias means a person may have a prejudice or attitude that prevents objective judgement of something.

The **burden of proof** is the responsibility of producing sufficient evidence in support of a fact or issue and favourably persuading a judge or jury regarding that fact or issue. The burden of proof is up to the prosecution.

Clemency is the willingness or ability to moderate the severity of a punishment (as a sentence) as an act or instance of mercy, compassion or forgiveness.

The **Crown** refers to the state. Prosecutions are conducted on behalf of "Her Majesty the Queen."

Double jeopardy, or the prosecution of a person again for an offence for which he or she has already been committed, can not occur.

Embodied means to become part of the law.

The written laws created by the government of Canada are **federal statutes.**

Incarceration is the act of placing someone convicted of a crime in prison.

To suggest or show involvement in a crime is to **incriminate** a person.

Intent refers to the decision to commit a certain act.

Jury secrecy rules prohibit anyone from discussing what happened during jury deliberations or the reasons the jury had for coming to their decision.

Legal aid is provided by an organization established to serve the legal needs of people who, for financial reasons, can not retain their own counsel.

Moral culpability considers the blameworthiness of a person and looks at whether he or she intended to do wrong.

Non-compliance is a failure to observe or comply with the rights of an accused under the Charter.

Omissions are an intentional or unintentional failure to act that may impose criminal liability if a duty to act under the circumstances is specified by law.

Presumption of innocence refers to the fact that an accused person must be proven guilty. The law starts from the position that the accused person is innocent of the charge.

Proof of guilt beyond a **reasonable doubt** is required for conviction of a criminal defendant.

The *Charter's* provision against unreasonable **search and seizure** prevents police from searching a person or property and from seizing things without a warrant. The right comes into force when the person has a "reasonable expectation of privacy."

When the Crown enters a **stay of proceedings,** the prosecution is ended. It is the same as if the accused had never been charged. However, the Crown (prosecutor) can reactivate the charge within one year. When the Court enters a stay of proceedings, it is effectively the same as if the accused had been acquitted. The charge may not be reactivated except by a higher court.

A **summary conviction offence** is a lesser offence that is generally punishable by a fine of not more than $2,000 or imprisonment for six months, or both. A few offences allow a maximum of 18 months in jail.

A **warrant** is an official order authorizing a specific act, such as an arrest or the search of someone's home.

4 Criminal justice

Charts, handouts and visual organizers

The charts, handouts and visual organizers can be used to reinforce, enrich and extend the content provided in the summary and backgrounders.

HANDOUT

A case in point

Consider these examples of the crime of being in possession of stolen property (Section 355):

Sam sees his friend Wendy walk up to a car parked in a shopping mall. Wendy breaks the car window, reaches in and takes the CDs that are on the seat. There are too many for her to carry so she gives some of them to Sam to carry.

Sam is sitting in a restaurant and Bugsy walks up to him. Sam has never met Bugsy before. Bugsy offers to sell Sam a brand new big-screen TV for $100. Sam quickly pulls out his wallet, gives Bugsy $100 and takes delivery of a 52" HDTV.

In the first scenario, Sam is guilty because he knew the property was stolen (he saw the theft happen), and he took possession and control of the CDs of his own free will. He willingly took possession of property that he knew was stolen.

In the second scenario, Sam would protest, "How did I know it was stolen?" The criminal law is a statement of society's morality. Society says that Sam was reckless or "willfully blind" about the true nature of the TV. He turned a blind eye to the obvious, and the law will not condone that.

Similarly, if a man walks into a crowded room and starts swinging a sword around, he cannot claim innocence when someone gets hurt. The law says that, even if he did not "intend" to hurt anyone, the man was not concerned about whether anyone would get hurt. It was reasonably foreseeable that the harm would occur.

HANDOUT

A continuum of responsibility

It is important to appreciate the following continuum when considering the different burdens in the legal system.

▲ TRUTH

▲ BEYOND REASONABLE DOUBT

▲ BALANCE OF PROBABILITIES

▲ REASONABLE AND PROBABLE GROUNDS

▲ REASONABLE SUSPICION

▲ MERE SUSPICION / HUNCH

VISUAL ORGANIZER

Comparison chart

In the first column, describe how the criminal justice system protects the needs and rights of individuals. In the second column, describe how the criminal justice system protects society.

Protecting the needs and rights of individuals	Protecting society

HANDOUT

Shoplifting: Questions and answers

Our local corner store owner called today to tell me that my daughter had been caught taking some chocolate bars without paying. He said he won't lay charges but wants to meet with us to talk. I appreciate his attitude but I want to know what charges she might have faced.

Your daughter could have been charged with the crime of theft. The *Criminal Code of Canada* defines theft as taking the property of someone else with the intent to take it away temporarily or permanently from its rightful owner.

She's just a kid and her friends dared her to see if she could get away with it. Is that really theft?

Yes, it really is theft. It is theft if a person takes property belonging to others with an intention of depriving them of it. It doesn't matter if the property is worth very little or if it was just a dare.

Shouldn't there be a difference between stealing a chocolate bar worth 75 cents and stealing $50,000 worth of jewelry from a store?

The *Criminal Code of Canada* does make a distinction on the basis of the value of the items stolen. The offences are called "theft under $5000" and "theft over $5000."

What is shoplifting? Hasn't my daughter just been caught shoplifting?

Shoplifting is a common or street term that usually refers to the offence of theft under the value of $5,000. It means taking something out of a store without paying for it.

How does the law distinguish between theft under $5,000 and theft over $5,000?

The Crown Prosecutor handles the charges differently. In the case of theft under $5000, the Crown Prosecutor can decide to handle the charge as a "summary" offence or an "indictable" offence. Of the two, indictable offences are the more serious, and the court procedures are more complicated. If a person is convicted of an indictable offence, the penalties can be more severe.

What would the penalties be if my daughter were convicted of theft as a summary offence?

A person convicted of theft under $5,000 as a summary offence can be fined up to $2,000 or imprisoned for up to six months, or both. These are maximum penalties, however. The penalties for a first offender would likely be much less severe. As well, other options are available to your daughter if she is a minor.

What if a person is convicted of theft under $5,000 as an indictable offence?

A person convicted of theft under $5,000 as an indictable offence could be fined and/or imprisoned for up to two years. However, the Crown rarely proceeds with such a charge as an indictable offence, particularly if it is a first offence.

How does the prosecutor decide how to proceed?

The prosecutor looks at a number of factors, including the circumstances of the crime, the age of the accused and whether or not the accused has a previous record.

To return to my daughter, the store owner detained her in a back room of the store and told her he was going to call the police. Did he have the right to do that?

Yes. You may have heard the term "citizen's arrest." This means that any citizen has a limited right to arrest another person who is seen committing an indictable offence or if the citizen believes on reasonable and probable grounds that someone is committing a crime. Citizen's arrests often involve shoplifting. Store detectives or other store employees detain a suspect and call the police. Having detained your daughter, the store owner must call the police immediately and let them take over as soon as they arrive.

The store owner went through my daughter's backpack looking for more stolen property. Did he have the right to do that?

Probably not. The arrest of a citizen by another citizen is seen as a government function to which the Canadian *Charter of Rights and Freedoms* applies. Section 8 of the *Charter* provides that everyone has the right to be secure against unreasonable search and seizure. Even if the store owner had seen your daughter put goods into her backpack, he should probably have waited until the police arrive. The police have a wider discretion with regard to searches.

The store owner asked my daughter a lot of questions. Did he have the right to do that?

The law is not really clear on this point. If the store owner had simply stopped your daughter in an aisle and asked her if she had taken anything, that might be appropriate. Your daughter has the right not to answer any questions even at this point. However, if the store owner had asked her to come to an office as she was suspected of taking goods, he might then be under an obligation to tell her what her rights are before asking her any questions. Therefore, the store owner has the right to ask questions, although there might be some issue as to the procedure to be followed, depending on the circumstances of the questioning. In all situations your daughter has the right not to answer any questions.

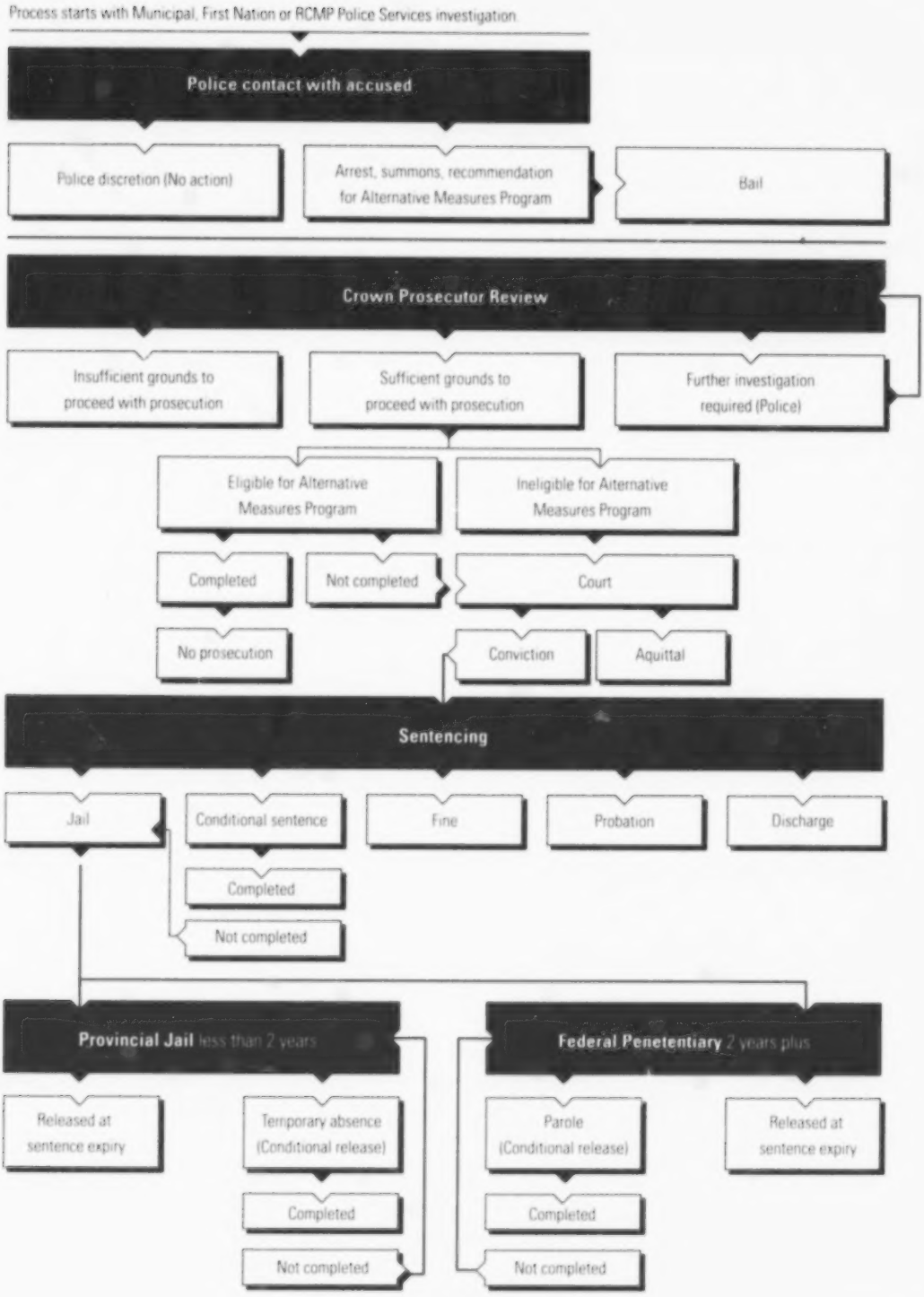
When the police arrive, the justice process takes over. If the daughter in this example is under the age of 18, she will at least initially be in the youth justice system. Her rights would be different from the rights of an adult.

Scenario adapted from the website www.law-faqs.org/nat/cr-shp.htm.

How would a situation involving shoplifting follow the process of the criminal justice system?

PROCESS FLOWCHART

The process of the criminal justice system



VISUAL ORGANIZER

Applying concepts

Provide examples that illustrate the concepts in the wheel below.

HANDOUT

This is not American television: U.S. versus Canadian systems

The only exposure that many Canadians will have to a criminal court is in their own living rooms. Having watched *Law and Order* or some other American courtroom drama, some Canadians mistakenly expect the terms, institutions and procedures of the American system when they are introduced to our justice system.

The most fundamental difference between the U.S. and Canadian systems lies in the roles of the judge and prosecutor.

In many American jurisdictions, the judge is elected, though there are a great number of different ways in which those elections are held. Some of the elections are partisan (i.e., the nominee is affiliated with and supported by one of the political parties) while others are not. There are different processes in each state as well. In California, for instance, any qualified lawyer can run for judicial office at election time. The process is non-partisan. However, if a vacancy arises between elections, the governor appoints the judge. Eventually the public has an opportunity to decide whether the judge remains on the Bench or not. For municipal and superior court judges, it is after 6 years; for Supreme and Appeal Courts it is after 12 years. By this time the judge has had an opportunity to rule on cases and demonstrate his or her judgment.

While the election of judges keeps the administration of justice consistent with prevailing social ideals, this system comes with many problems. Judicial independence can be compromised if the desire of a judge to get re-elected prevails over the duty to make unpopular decisions. The judge may favour a person who is from the judge's jurisdiction (i.e., a voter) over someone who is from elsewhere. Furthermore, the prestige of becoming a judge led to a situation where one election had 100 nominees vying for approximately 40 judicial seats. A voter in that situation will have a very difficult, or impossible, task in choosing the best people for such an important position.

This same distinction applies to the prosecutor. In the United States, prosecutions are conducted by the District Attorney's Office, the District Attorney being an elected official. His or her role in the administration of justice is very "hands-on," with decisions being made on many files. When it is time for an election, the District Attorney will fail or succeed in relation to the public's perception of the performance of the prosecution service. For that reason, prosecutors may feel restricted in making the tough calls. In some cases they may be prohibited from taking the course of action they deem appropriate.

In Canada, the prosecutor is the Agent of the Attorney General. Though the Attorney General is an elected official and a member of the governing party, there is a traditional separation of that Minister from the rest of Cabinet. Additionally, the Attorney General rarely (if ever) gets involved in the administration of the criminal justice system. The Deputy Attorney General, who is a very senior member of the civil service, does not change with the government. So while the government will make policy for the Justice Department, actual decisions regarding individual files will practically never make their way into the realm of an elected official.

For more information on judicial selection, see the discussion at the American Judicial Society's website: www.ajs.org.

HANDOUT

This is not American television: U.S. versus Canadian systems

The American "Grand Jury" is an English institution that has been eliminated in the Canadian system. In the U.S., the case for the prosecution may be presented to the Grand Jury, who will decide whether or not it proceeds. In Canada, that decision rests entirely with the Attorney General and his agents.

The yelling and dramatic activities depicted as occurring in American courtrooms (whether or not they really happen anywhere other than in Hollywood) are completely unknown in Canadian criminal courts. Lawyers do not benefit from these displays, and judges simply do not permit them.

5 Civil and family justice

This thematic section can be used to teach generalizations and concepts related to the rights and responsibilities of citizens outside of criminal law. The need for citizens to act responsibly in everyday life is a premise of the civil justice system and of responsible citizenship. This thematic section also looks at the process of resolving differences and the rights of individuals in the area of family law.

CURRICULAR OVERVIEW

Civil and family justice

The following outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada can be met through the civil and family justice thematic section

Critical and creative thinking

This thematic section encourages the development of the following critical and creative thinking skills.

Students should acquire the knowledge and skills necessary to:

- Examine the process whereby decisions affecting themselves and society are made
- Design and evaluate alternative methods of providing for the protection of human rights in society
- Examine how questions that involve the needs of the individual and the needs of the state are resolved.

Inquiry

This thematic section supports the use of issues and questions for inquiry from the Alberta Social Studies 10 Program of Studies.

- To what extent should Canada pursue a leadership role in working for the protection of human rights?
- How can citizens influence decision making by governments in Canada?
- What responsibilities does the individual have in Canadian society?
- How are human rights protected in Canada?

Knowledge outcomes

This thematic section develops generalizations, key understandings, concepts and related facts from the Alberta Social Studies 10 Program of Studies.

Theme I: Politics and government

Politics are a feature of everyday life

- Decision making
- Organization

  Identify examples of consensus, majority rule, influence, negotiation and compromise at school, community, provincial and national levels (laws, services, etc.).

Theme II: Citizen participation

The citizen has a role in the political process

- Participation

  Briefly examine citizens' participation in the political process:

  - Lobbying
  - Demonstrating.

Political differences are resolved through a variety of approaches

- Democratic process
- Majority and minority rights
- Negotiation and compromise

  Identify ways of resolving differences:

  - Legal actions
  - Royal commissions
  - Arbitration.

Theme III: Rights and responsibilities

Rights and responsibilities are associated with citizenship

- Rights

  Examine rights (individual and collective) in Canadian society:

  - Human
  - Civil
  - Legal
  - Minority
  - Cultural
  - Freedoms
  - Justice
  - Equality
- Responsibilities
  - Examine responsibilities in Canadian society:
  - Political (franchise)
  - Legal (jury duty)
  - Moral (respect for the rights of others)
  - Social (participating in community activities; e.g., volunteering).

There are various means that help to protect and preserve rights in Canada

- Entrenchment of rights
- Safeguarding rights

  Explain how the following help to protect human rights:

  - Courts
  - Media.

Civil and family justice

Focus questions and activities

In this thematic section, there are three focus questions and a variety of learning activities. The focus questions and activities in the civil and family justice thematic section are designed to:

- Organize the information in this thematic section around the three themes in the Alberta Social Studies 10 Program of Studies Topic B
- Involve students in critical and creative thinking activities
- Establish questions and issues for inquiry.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: **Civil and family justice**
- Backgrounder: **The civil and family justice system**
- Websites

The Alberta Justice website at www4.gov.ab.ca/just/lawu/roles13.html offers information on different aspects of the civil justice system, including the role of the federal and provincial governments.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How does the civil justice system resolve questions that involve the needs of the individual and the needs of the state?

Law affects life

Have students work in small groups to brainstorm ideas on how the law affects every aspect of daily life, such as living in a community, school life, family life, communication, transportation and the workplace. Write these categories on the blackboard.

Then, use a blackboard share strategy to have groups develop specific examples for each category. Have each group appoint a recorder. As the group brainstorms specific examples, the recorder writes them on the blackboard under the appropriate category. The recorder moves back and forth between the group and the blackboard to continually add new examples. Once examples have been recorded and discussed, have each student write an individual response to the following questions:

- Why do we need non-criminal laws to govern our everyday behaviour?
- Is there any part of our daily lives that is not affected by laws?

The concepts of the civil justice system

Have students work in small groups to review and outline the basic concepts of the civil justice system. Ask each group to identify how the following concepts are represented in the civil justice system:

- Social responsibility
- Moral responsibility
- Individual versus collective rights and responsibilities.

Issue paper

Have students write an issue paper that outlines and defends a personal position on the extent of government involvement in aspects of the civil justice system in Alberta and Canada. Have them consider the following question:

- To what extent should the provincial or federal governments be involved in matters involving the civil justice system?

Teacher preparation

These student and teacher resources support the activities below.

- Summary: Civil and family justice
- Backgrounder: The elements of the civil justice system
- Backgrounder: The process of justice in civil and family law
- Process flowchart: The process of resolving civil claims
- Visual organizer: Comparison flowchart
- Websites

Several websites offer information on the civil justice system.

For answers to general questions regarding various civil law topics, go to www.law-faqs.org/topics.htm.

For information on general areas of law pertaining to Alberta, with some areas specific to civil justice, go to www.law-faqs.org/ab.htm.

The federal Department of Justice provides information on different aspects of the legal system including civil justice at http://canada.justice.gc.ca/en/dept/pub/just/index.html and http://canada.justice.gc.ca/en/dept/pub/just/CSJ_page19.html.

For student handouts that provide information on the civil justice system, go to www.csc-scc.gc.ca/text/pubed/nregard/handouts_e.shtml.

For a lesson plan that focuses on a civil justice issue, with student materials that include case studies based on workplace rights, go to www.acjnet.org/teacher/worksum.htm.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What rights and responsibilities does the individual have in Canadian society?

Analyzing elements of the civil justice system

Ask students to use information on the civil justice system to write a case study showing the extent to which the rights of the individual are protected. Have them consider the following points.

The facts of the story: How do the following steps in the process of civil claims protect the needs and rights of the individual?

- Pleadings
- Discovery
- Trial
- Judgment.

The facts of the story: What are the different aspects of civil law? How are individuals affected by civil law? How is society affected?

- Tort claims
- Negligence in tort law
- Contract claims
- Arbitration and mediation
- Judicial dispute resolution.

The issues involved: How can the elements and principles of the civil justice system be applied to issues such as the following?

- Workplace rights
- Gender rights
- Children's rights; e.g., a parent spanking a child in public.

The arguments: Which perspective, the individual's or society's, should take precedence when decisions are made in civil justice proceedings?

Decisions: What is your opinion on these issues and how would you support your view with supporting evidence from the civil justice system?

A students' court

Work with the class to set up and conduct a students' court on a civil issue such as workplace or labour rights. Have students work in small groups to develop a scenario that involves a civil issue, or use a description of an actual case. The scenario should be written to provide details about:

- The facts of the case
- Who is involved
- The issues involved in the case.

The students' court format can be organized much like a debate. However, there is an additional role: a panel of students listens to the opposing viewpoints and makes a judgment on the issue as a judge would in a court. The students' panel can be asked to confer about their final judgment in front of the class. To conduct the students' court process, have students take on the following roles:

- A students' panel (a group of students who will listen to the facts of the issue and make a judgment)
- A group that presents one side of the issue
- A group that presents another side of the issue.

Role play

Have students work in small groups to develop a role-play scenario that identifies what responsibilities are in terms of the civil justice system and tort law. Ask groups of students to select a topic from the following list:

- You have taken a job at a fast food restaurant.
- There is a heavy snowfall in the town.
- You have just obtained your driver's license.

Have students review the elements of tort law and develop their scenario around an example that illustrates appropriate aspects of tort law. Have groups present their role-play scenarios to other groups or to the entire class.

Comparing rights and responsibilities

Have students review the concepts of rights and responsibilities. Ask them to create a flowchart that identifies each step of the civil justice process and the rights and responsibilities that are inherent in each step.

- Pleadings
- Discovery
- Trial
- Judgment.

Rights within the civil justice system

Have students develop a written personal response to the civil justice system, using the following questions as a guide:

- How does the civil justice system affect you personally?
- What have you personally experienced as a result of laws in the civil justice system?
- What do you see as possible sources of conflict between individuals?
- What forms of conflict resolution are offered by the civil justice system? How effective do you think these forms of conflict resolution are?

Guest speakers

Work with students to develop a list of speakers representing the civil justice system to invite into the classroom to provide additional information or perspectives on the civil justice system. Have each student work with a partner to research contact information for speakers such as judges, defense council, court clerks, court reporters and lawyers who are involved in different areas of civil law. Possible guest speakers include:

- Personal injury lawyers (sometimes called "plaintiff's counsel, as they represent those complaining of being injured)
- Insurance defence lawyers
- Family law lawyers
- Environmental lawyers
- Intellectual property lawyers
- Corporate lawyers
- Real estate lawyers.
- Provincial Court judges
- Court of Queen's Bench judges.

Have students develop an invitation to speak to the class that includes:

- The purpose of the request
- The topics or issues being studied
- The information students are interested in.

Work with students to contact potential speakers and present the invitation.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: **Civil and family justice**
- Backgrounder: **Rights and responsibilities for families**
- Process flowchart: **The process of resolving family law disputes**
- Visual organizer: **Issues organizer**
- Websites

The Alberta Justice website at www4.gov.ab.ca/just/lawu/roles13.html provides information on different aspects of family law.

For answers to general questions about various family law topics, go to www.law-faqs.org/topics.htm.

For information on the history of women's rights in Canada and more specifically the 'Persons' Case, go to www.famous5.org.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How are the rights and responsibilities of families protected by legislation?

Family law concept web

Have students create an illustrated concept web that outlines the different aspects of family law within the civil justice system. Have students consult various Internet or media sources to help them identify the links between different aspects of family law, such as marriage, divorce, custody and access issues, adoption and guardianship.

Ask students to construct their concept web on poster paper. Have them include examples of media or Internet sources that provide additional information and any other illustrations that they wish to use.

Media search

Ask students to individually look for examples of articles in the media that relate to issues to which family law may apply. Have students focus on the following questions:

- How are rights of the individual protected within family law?
- How does family law reflect societal expectations?

Have them work with a partner to construct a poster that provides:

- A statement that answers the questions
- A short essay that discusses the extent to which individual rights are protected within family law
- Examples from media articles that illustrate and support their position.

Investigating an issue

Ask students to use a visual organizer, such as the issues organizer flowchart, to investigate an issue related to family law. An issue can be selected from questions such as:

- What are the rights and obligations of parents to their children? What are the rights and obligations of children?
- Do children's rights change in the case of the divorce or separation of parents?
- To what extent should children be able to make their own medical decisions?
- On what basis should courts determine custody for children?
- What should the obligation be for unmarried underage parents to pay child support?
- Should mediation be required in all family law disputes?

Making comparisons

Ask students to research, individually or in small groups, how the rights of women or children are protected through the civil justice system in Canada and other countries. Have them compare the rights of women or children today to those in the early 20th century using classroom resources and textbooks, library sources or the Internet. Have students share their findings.

Civil and family justice

Summary, backgrounders and glossary

The summary, backgrounders and glossary provide information about civil justice and can be used in a variety of ways:

- The summary of key content provides a synthesis and advance organizer for the information in the thematic section. The summary can be used as an introduction to the section, a review of key content or an overview of the theme for class or group activities.
- The backgrounders provide information on different aspects of the judicial system. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study and critical thinking development.
- The glossary lists key terms and definitions. These terms appear in bold type throughout the summary and backgrounders.

SUMMARY

Civil and family justice

The civil and family justice system

Civil action

- A civil action is any legal action that is not a criminal action. Civil actions are often between private individuals, whereas criminal actions are between the state and the accused. However there are actions between private individuals and the state that are civil in nature, such as child protection actions.
- Examples of civil actions include:
  - Claims for debt
  - Damages arising from motor vehicle accidents
  - **Foreclosures.**
- Civil actions are heard in courts, like criminal acts.
- Many of the people involved are the same as those involved in the criminal judicial process.

Provincial Minister of Justice and Attorney General

- One individual who has a different role is the Alberta Minister of Justice.
- The Minister does not become involved in civil matters unless the government is a party to the action.

The elements of the civil justice system

Judges

Judges are appointed by the government to:

- Interpret legislation
- Develop the **common law**
- Determine the validity of laws
- Determine the facts and render decisions in a fair and impartial manner.

Lawyers

- A lawyer may represent a person in a civil matter, or act as defence counsel or prosecutor in a criminal matter.
- Lawyers have a duty to ensure that all legal issues bearing on a case are fully explored and properly **adjudicated,** even for persons who may appear guilty.

Courts in Alberta

There are three courts in Alberta administered by the province:

- The Court of Appeal of Alberta hears most **civil and criminal appeals**, and can also hear applications and appeals respecting certain judgments, orders and decisions of the other courts.
- The Court of Queen's Bench of Alberta:
  - Holds jury trials for both criminal and civil matters, and can hear civil trials for **damages**, regardless of the amount.
  - Handles matters such as divorces, adoptions, foreclosures and bankruptcies, in addition to matters relating to **wills** and **estates.**
- The Provincial Court of Alberta (Civil) handles civil claims where the amount claimed does not exceed $7,500.
- The Provincial Court of Alberta (Family) handles child welfare matters. Where there is legislated authority, it also handles other family matters such as custody, access and maintenance.

The Federal Court of Canada

- Some of the matters that the Federal Court of Canada handles relate to **intellectual property** and **civil litigation** involving First Nations, Metis and Inuit people.

The process of justice in civil and family law

Civil actions

To be sued or to sue someone is a civil action. Following are some frequently asked questions concerning lawsuits and the process involved if someone is trying to sue you.

What should an individual do if he or she is "served" with a legal document?

- If the document you receive is one of the following, quick action must be taken to dispute the claim or the action sought:
  - **Statement of Claim**
  - **Petition**
  - **Originating Notice**
  - **Civil Claim.**
- A judgment or order may be made if an individual fails to reply to any of these documents within the required time and in the required form.
- Courts can and do hear cases and decide cases against defendants without the defendants' participation.

The pleadings

- Pleadings are the formal written claims and defences used to start and defend a lawsuit.
- The proper form of pleading will depend on the type of claim and the court in which the action is started. For instance, divorce actions and motor vehicle accident claims are started by **Statement of Claim.**

The discovery process

- The discovery process allows one party to obtain admissions from the other party and to learn more about the other party's case to decide if it is worth going to trial, or if a settlement should be offered.

The trial process

- The trial process involves a number of elements:
  - All proceedings involving preparation for trial
  - The trial itself
  - The giving of the judgment
  - The filing of the order.
- This process takes time and can cost a great deal of money.
- Any appeal of a court order must be filed within a specified period of time, or the right to appeal may be lost. A lawyer will know these deadlines.

Is a lawyer needed to start or defend a lawsuit?

- Normally, a lawyer is not needed to handle a claim in Provincial Court (Civil). The procedures are usually less formal and less complicated.
- In other courts, the procedure for civil claims is more complex and a lawyer's advice may prove very helpful.

If a case is won, does the other party pay all the legal fees?

- An order that one party pays some, all or none of the other party's costs is called an order for costs. It is not common for all of the successful party's legal fees to be borne by the other party.

How do individuals collect on a judgment?

- Winning a lawsuit or an order for costs does not always end the matter. If the losing party does not cooperate, an individual has to start enforcement proceedings to collect on the judgment.
- There are a variety of enforcement proceedings. They include:
  - **Garnisheeing** wages
  - Seizing property owned by the other party
  - Registering the judgment against property
  - Contempt of court.

Why should a lawyer be consulted?

- A lawyer is an advocate and will conduct matters with his or her client's best interests in mind.

Specific types of common civil claims

Two of the most common general types of civil claims pursued in Alberta courts are tort claims and contract claims.

Tort claims

- Tort refers to that body of the law that will allow an injured person to obtain compensation from the person who caused the injury.
- All citizens are expected to conduct themselves without injuring others.
- When they do cause injury to others, either intentionally or by **negligence,** they can be required by a court to pay money to the injured party so that, ultimately, they will suffer the pain caused by their action.
- The money paid to an injured party is called damages.
- Compensation is probably the most important social role of tort law.
- Tort also serves as a deterrent (something that motivates someone not to do something) by holding persons responsible for their actions. A tort educates the community about what conduct is unacceptable.
- Negligence is the most important field of tort law as it governs most activities of modern society. In a nutshell, to establish negligence, you have to show the "ABCs" of negligence: (a) a duty of care must exist between the person injured and the person responsible for that injury, (b) the conduct of the defendant fell short of that duty of care and (c) there were resultant damages.
- Negligence is classified as an "unintentional tort" since the defendant's actions were without regard to the potentially harmful consequences of the behaviour undertaken.
- Negligence is most frequently alleged in motor vehicle accidents, and in personal injury and medical malpractice civil actions.

Standard of care: The "reasonable person"

- The law judges all persons according to one standard.
- It is said that the law "does not attempt to see people as God sees them" but, instead, expects all individuals to act as a reasonably intelligent person "who makes prudence a guide to his or her conduct."
- While there are many perspectives on how a reasonably intelligent person may act, the judge is not allowed to superimpose his or her standards upon a given situation, complete with the judge's weaknesses and biases. Instead, the judge must superimpose the standard of the reasonable person.

Contract law

- Another common source of a lawyer's **litigation** practice is contract law.
- Contracts rule many business relationships, including real estate sales, employment contracts, automobile leases, warranties, cell phone plans and credit card agreements.
- The contract, whether written or not, sets out the rules by which the contracting parties play, the term or duration of the relationship created by the contract, the burdens and benefits gained due to the relationship, and the consequences of failing to fulfill the obligations.
- Contracts govern a wide range of human activity, such as the purchase and sale of real estate, employment, insurance, and the furnishing of services, e.g., medical, legal, engineering, architectural, painting, construction, education, loans, software licensing, publishing, movie making and drycleaning.
- When two or more parties are in a dispute over a contract, civil law provides an avenue to resolve the dispute.

Arbitration

- Arbitration, in its basic form, is **dispute resolution** on the basis of an agreement or contract between the parties to the dispute.
- The parties choose one or more persons to hear their pleading and examine the evidence in a relatively informal setting.
- They agree on the procedure to be followed, and in most cases the award is final and binding.

Mediation

- Mediation is a process of dispute resolution where a mediator or trained negotiator assists parties to a dispute who have each agreed to mediate in negotiating a settlement.
- The process takes place on a confidential, without prejudice basis and is entirely voluntary.
- Peer mediation is an example of this kind of process. It has been successfully used in schools, although in an informal way.

Judicial dispute resolution

- Judicial dispute resolution is a relatively new approach to early case resolution that provides an informal forum for judges to hear both sides of cases and offer an impartial, non-binding opinion.
- The process is a way of resolving cases without going to trial.

Rights and responsibilities for families

Family law

- Family law covers the unique legal rights and obligations that arise between family members.
- Family relationships are not just legal relationships; they have emotional and social aspects. When there are family law issues, there are often psychological or other issues that need to be dealt with. For this reason, the justice system encourages people to deal with family issues in a holistic way, rather than just by using the formal court process.
- For example, the justice system may encourage people to attend "Parenting After Separation" courses, to use mediation or judicial dispute resolution and to seek the help of psychologists and counsellors, as well as lawyers, to deal with their issues.
- Children have rights. These may become especially important if the child's lifestyle or liberty is an issue, such as when parents divorce or separate, medical decisions must be made about the child or a child wants to leave home.
- To deal with a wide range of family matters, there is specific legislation as well as rules of court.

BACKGROUNDER

The civil and family justice system

How does the Canadian justice system differentiate between civil and criminal law?

A civil action is any legal action that is not a criminal action. Civil actions are often between private individuals, whereas criminal actions are between the state and the accused. Actions between private individuals and the state that are civil in nature include child protection actions.

Examples of civil actions include:

- Claims for debt
- Damages arising from motor vehicle accidents
- Divorces
- Adoptions
- **Matrimonial property actions**
- **Foreclosures**
- Administration of estates following a death.

The persons involved in a civil action are called the parties. Civil actions are heard in courts, like criminal crimes. Many of the people involved are the same as those involved in the criminal judicial process.

Provincial Minister of Justice and Attorney General

What is the role of the Alberta Minister of Justice in civil matters?

One individual who has a different role in civil matters is the Alberta Minister of Justice. The Minister is responsible for legal proceedings under the *Criminal Code*, the *Youth Criminal Justice Act* and provincial laws. The Minister does not become involved in civil matters unless the government is a party to the action.

BACKGROUNDER

The elements of the civil justice system

Judges

What is the rule of law? How are all citizens accountable under the rule of law?

Judges are appointed by the government. They interpret legislation, develop the **common law,** determine the validity of laws, determine the facts, and render decisions in a fair and impartial manner, thereby ensuring the rule of law, which is the cornerstone of a free and democratic society. They do this work in relation to both criminal and civil law.

Lawyers

A lawyer may represent a person in a civil matter or act as defence counsel or prosecutor in a criminal matter. Lawyers are regulated by the Law Society of Alberta. Lawyers have a duty to ensure that all legal issues bearing on a case are fully explored and properly **adjudicated,** even for persons who may appear guilty.

Courts in Alberta

Who makes decisions regarding civil matters in Alberta?

There are three courts in Alberta administered by the province:

- The Court of Appeal of Alberta hears most **civil and criminal appeals,** and can also hear applications and appeals respecting certain judgments, orders and decisions of the other courts.
- The Court of Queen's Bench of Alberta holds jury trials for both criminal and civil matters, and it can hear civil trials for **damages**, regardless of the amount. It also handles matters such as divorces, adoptions, foreclosures and bankruptcies, in addition to matters relating to **wills** and **estates**.
- The Provincial Court of Alberta has four different functions: criminal, family, youth and civil. The Civil unit handles civil claims where the amount claimed does not exceed $7,500. All provincial court judges may hear any of these matters.

What is the hierarchy of courts in Canada's justice system? On what basis would one court hear an appeal on another court's ruling?

There are other courts that administer laws in Alberta, including the Federal Court of Canada, Trial and Appeal Divisions. There are also a number of boards and **tribunals** in Alberta, and their decisions may be appealed to the courts.

The Federal Court of Canada

What decisions does the Federal Court make regarding civil matters?

The Federal Court of Canada handles matters relating to **intellectual property; civil litigation** involving First Nations, Metis and Inuit people; federal Crown litigation; federal Crown judicial reviews; and Maritime legislation.

BACKGROUNDER

The process of justice in civil and family law

How are differences resolved in the civil justice system?

To be sued or to sue someone is a civil action. Following are some frequently asked questions concerning lawsuits and the process involved if someone is trying to sue you.

What should an individual do if he or she is "served" with a legal document?

If the document received is one of the following, quick action must be taken if the claim is disputed or an action sought:

- Statement of Claim (This document initiates a civil claim in an action in the Court of Queen's Bench)
- Summons
- Petition
- Originating Notice
- Civil Claim (This document initiates a claim in a **small claims** or a Provincial Court civil action).

These documents cannot be ignored. Individuals may get a judgment or order made against them if they fail to reply to any of these documents within the required time and in the required form. Ignoring a lawsuit will not make it go away. Courts can and do hear cases and decide cases against defendants without the defendants' participation. Individuals should seek legal advice if they receive any legal documents. A lawyer can advise a person of the time limits that apply to a case.

What steps are involved in a civil action?

There are three stages in most civil actions:

- The filing and serving (physical delivery of documents to the opposing party) of the pleadings
- The discovery process
- The trial process.

Certain critical deadlines apply to each of these stages.

The pleadings

How do pleadings serve the rights of the individual?

Pleadings are the formal written claims and defences used to start and defend a lawsuit. Pleadings include:

- **Statements of claim**
- **Statements of defence**
- **Civil claims** (Provincial Court)
- **Dispute notes** (Provincial Court)
- **Counterclaims**
- **Petitions**
- **Originating notices**
- **Answers.**

These documents set out the issues and any defence to the claim.

The proper form of pleading will depend on the type of claim and the court in which the action is started. For instance, divorce actions and motor vehicle accident claims are started by Statement of Claim.

The discovery process

What rights are protected by the process of discovery? What responsibilities are involved?

The discovery process allows one party to obtain admissions from the other party and to learn more about the other party's case to decide if it is worth going to trial, or if a settlement should be offered. If the parties cannot reach an agreement, the court will have to decide the matter for them.

There are several elements to the discovery process. For example, each party can be required to disclose to the other party all documents and information relevant to the case. In addition, each party can be required to attend a meeting and be questioned under oath (the party swears to tell the truth) concerning the claim. This is called an **examination for discovery**.

The questions and answers are recorded and then produced in written form. They can be used by the opposite party at trial. A lawyer will help his or her client prepare for this procedure. A lawyer can never advise a client to lie at such a discovery and has an obligation as an officer to the court to withdraw from the case if he or she discovers the client is lying to purposely mislead the court.

The trial process

The trial process involves a number of elements:

- All proceedings involving preparation for trial
- The trial itself
- The giving of the judgment
- The filing of the order.

This process takes time and can cost a great deal of money. Trials are expensive for all parties. Usually lawyers for the parties try to resolve disputes by agreement rather than undergoing the expense of running a trial.

Some people claim that the court system is tied up with trivial cases. How should decisions be made about whether or not a matter should go through the court system?

Any appeal of a court order must be filed within a specified period of time, or the right to appeal may be lost. A lawyer will know these deadlines.

Is a lawyer needed to start or defend a lawsuit?

What roles do lawyers play in the protection of individual rights?

Normally, a lawyer is not needed to handle a claim in Provincial Court (Civil). The procedures in Provincial Court are less formal than those used in the other courts. For instance, there is no discovery process. The Provincial Court is intended for use by the public.

In the other courts, the procedures are usually more complicated. There are more rules and time limits that must be followed. Failure to comply with these requirements could mean that the action will be dismissed, that it will go ahead in the absence of the defendant or that costs will be awarded against the defendant.

If the case is won, does the other party pay all the legal fees?

An order that one party pays some, all or none of the other party's costs is called an order for costs, which is usually made in favour of the more successful party. If a person gets this order for costs, it does not mean that the other party will pay 100 percent of the lawyer's fees. In effect, this order means that the other party owes only a portion of the amount actually paid in legal fees. Orders for 100 percent of the successful party's costs are made only in rare and special circumstances.

How do individuals collect on a judgment?

Winning a lawsuit or an order for costs does not always end the matter. Some orders, like those for divorce or adoption, do not require the cooperation of the other side; others do, for example, those for payment of a sum of money or the transfer of property. If the losing party does not cooperate, an individual has to start enforcement proceedings to collect on the judgment.

When there is a court order to pay child or spousal support, such as after a divorce or separation, the order can be registered with the government's Maintenance Enforcement Program, which will take all the enforcement steps needed to collect the support at no cost to the parties.

There are a variety of enforcement proceedings. They include:

- **Garnisheeing wages** or bank accounts. In the case of a garnishee on wages, the employer is ordered to pay the successful party directly from the unsuccessful party's wages each month until the judgment is paid in full.
- Seizing property owned by the other party. Goods are siezed and sold to reimburse the successful party.
- Registering the judgment against property. This makes property hard to

sell since there is a claim against it. Unsuccessful parties will likely try to pay the judgment in order to clear the claim and free the property up for sale.

- **Contempt of court** means to refuse to cooperate with or show disrespect to the court. It can involve fines or jail time, but this rarely happens. A lawyer can advise an individual of the most appropriate method in a case.

Why should a lawyer be consulted?

Even when an individual intends to handle his or her own legal proceedings, it is recommended that a lawyer be consulted first. This step might better protect an individual from concerns about limitation dates or any complications that may arise in a lawsuit. A lawyer is an advocate and will conduct matters with his or her client's best interests in mind.

Specific types of common civil claims

What is the process used to resolve differences in the two main types of civil claims?

Two of the most common general types of civil claims pursued in Alberta courts are tort claims and contract claims.

Tort is derived from the Latin word *tortus*, which means wrong. "Tort" also means a "wrong" in French. Tort refers to that body of the law that will allow an injured person to obtain compensation from the person who caused the injury.

What are the moral aspects of tort law? How do these aspects protect the values of society?

All citizens are expected to conduct themselves without injuring others. When they do cause injury to others, either intentionally or by **negligence**, they can be required by a court to pay money to the injured party so that, ultimately, they will suffer the pain caused by their action. Negligence is a form of carelessness or disregard for the potential harm one's actions could cause others. The money paid to an injured party is called damages. Compensation is probably the most important social role of tort law. Compensation in tort law is primarily the payment of money by the wrongdoer to the one wronged. That is the only practical way of restoring injured persons to a position similar to the one they enjoyed prior to the harm.

Tort also serves as a deterrent (something that motivates someone not to do something) by holding persons responsible for their actions. Tort educates the community about what conduct is unacceptable. Another moral lesson of tort law is that wrongdoers pay for their actions. This concept is a principle of modern society.

Tort law is not the same as criminal law. A crime often leads to two very different branches of the law, tort law and criminal law.

Criminal proceedings require proof beyond reasonable doubt whereas tort action only requires proof based on a preponderance of evidence. Why do you think this difference exists? What is the diffeence between "beyond reasonable doubt" and a "preponderance of evidence"?

Crime and tort entail very different legal processes. Criminal proceedings require proof beyond reasonable doubt whereas tort action only requires proof based on a preponderance of evidence (evidence of greater weight or more convincing in nature). This is also called the "balance of probabilities." A plaintiff, the one complaining of being wronged, must prove that the defendant, the alleged wrongdoer, did the wrong. Simply put, the person(s) hearing the case must be convinced, after hearing and weighing all of the evidence, that it is more likely that the plaintiff's version of the events is correct than the defendant's. If the case is 50-50, the plaintiff will not succeed in his or her case. He or she must tip the "balance of probabilities" in favour of the plaintiff to succeed. 49 to 51 percent in favour of the plaintiff will win the day in court.

A criminal conviction is by no means an automatic entitlement to compensation under tort law (although some states have criminal victims compensation laws which somewhat dilute this principle). In fact, there is an odd reluctance on the part of judges to accept a criminal court's finding that there has been a wrongful act, an injury and a direct link between the wrongful act and the injury while considering a tort lawsuit based on the same incident. Many legal experts are calling on courts to drop this resistance.

What are the "ABCs" of negligence?

Say someone punched you in the nose. This would be a crime, and it would be punishable in court. The state would prosecute the assailant on behalf of society, not on behalf of the victim. This has given rise to victim's rights demands. Any fine handed out against the offender as a sentence would not go to the victim but to the government.

That same punch could also give rise to an action under tort law. Under tort law, the victim would sue that person for causing injury, and the suit would ask the court to order that person to compensate the victim, asking for an amount which, as best as can be done, is worth the pain and inconvenience of a broken nose. Any compensation the court would order that person to pay would go to the victim.

"Negligence" is a word that most people associate with lawsuits. We commonly hear people say, "He was negligent while driving and caused an accident." Negligence is classified as an "unintentional tort" since the defendant's actions were without regard to the potentially harmful consequences of the behaviour undertaken. Tort is most frequently alleged in motor vehicle accidents, and in personal injury and medical malpractice civil actions. The basic concepts of negligence law include:

- Negligence is the most important field of tort law as it governs most activities of modern society. In a nutshell, to establish negligence, you have to show the "ABCs" of negligence:
  (a) a duty of care must exist between the person injured and the person responsible for that injury
  (b) the conduct of the defendant fell short of that duty of care, and
  (c) there were resultant damages.
- In a typical car accident scenario, all drivers generally owe a duty of care to their passengers, other drivers and pedestrians to drive with due care under the circumstances so as to avoid the likelihood of automobile accidents and injuries. Specific duties owed to others might include:
  1) Using a vehicle equipped with proper safety features, including lights,

brakes, seatbelts, unobstructed windows and windshields

2) Focusing on the act of driving rather than other distractions, including cell phones, reading, eating, chatting or perhaps sleeping
3) Altering one's driving habits to adjust to weather, traffic volume, time of day, road surface condition
4) Avoiding impairment (alcohol, drugs)
5) Obeying traffic signals and the rules of the road.

- Once successful in establishing that the defendant driver **breached** one or several of the duties above, the plaintiff in a motor vehicle or personal injury claim would then need to prove that the defendant driver did not pay that duty of care to the plaintiff. For example, a person does not look at the road while inserting a new CD in a player, dialing a friend on a cell phone or adjusting the volume of the music. The driver runs a red light, striking a pedestrian who is crossing in accordance with the pedestrian's light. The injured pedestrian would then have to prove that the driver's actions were a cause of some damage, such as pain, suffering, loss of work, loss of earning potential or psychological concerns, and that the damage was reasonably foreseeable.

The standard for judging whether or not a defendant acted negligently is that of the "reasonable person."

What moral, legal and social principles are involved in setting a standard of "reasonable person" in determining a civil case?

Standard of care: The "reasonable person"

The law judges all persons according to one standard. It is said that the law "does not attempt to see people as God sees them" but, instead, expects all individuals to act as a reasonably intelligent person "who makes prudence a guide to his or her conduct." While there are many perspectives on how a reasonably intelligent person may act, a judge would use this explanation of a reasonable person in making a decision. The judge is not allowed to superimpose his or her standards upon a given situation, complete with the judge's weaknesses and biases. Instead, the judge must superimpose the standard of the reasonable person. That is why, in negligence cases that go before a jury, the judge cannot tell the jury to ask themselves if "they would have acted differently," but "how the reasonable person would have acted."

What is a contract? How do contracts protect the rights of the individual? Is a verbal agreement considered to be a contract?

Contract law

Another common source of a lawyer's **litigation** practice is contract law. Contracts rule many business relationships, including real estate sales, employment contracts, automobile leases, warranties, cell phone plans and credit card agreements. The contract, whether written or not, sets out the rules by which the contracting parties play, the term or duration of the

relationship created by the contract, the burdens and benefits gained due to the relationship, and the consequences of failing to fulfill the obligations.

The law of contract implies the manner and extent to which private agreements among individuals or businesses, government and other entities will be enforced by courts. These agreements form and sustain a vast number of relationships and economic activities. Contracts govern a wide range of human activity, such as the purchase and sale of real estate, employment, insurance, and the furnishing of services, e.g., medical, legal, engineering, architectural, painting, construction, education, loans, software licensing, publishing, movie making and drycleaning.

What is the difference between written and verbal contracts? Can a verbal contract hold up in court?

When two or more parties are in a dispute over a contract, civil law provides an avenue to resolve the dispute. Often judges are asked to answer one or more of the following questions:

- Was there a contract between the parties at all?
- If there is a contract between the parties, is that contract one that the court can and will enforce?
- If there is a contract, is one or more of the parties failing to carry out its contractual obligations?
- If obligations are not being fulfilled, then what does the contract and the common law indicate are the remedies available to the wronged party?

About arbitration and mediation

What are the advantages of arbitrating a dispute?

Arbitration, in its basic form, is **dispute resolution** on the basis of an agreement or contract between the parties to the dispute. The parties choose one or more persons to hear their pleading and examine the evidence in a relatively informal setting. They agree on the procedure to be followed, and in most cases the award is final and binding. In many cases the arbitrator will be chosen because of his or her knowledge or experience in the field of dispute. In such cases, a considerable amount of time may be saved in comparison to court proceedings. The arbitration process is governed by Alberta legislation.

What happens during the process of mediation?

Mediation is a process of dispute resolution where a mediator or trained negotiator assists parties to a dispute who have each agreed to mediate in negotiating a settlement. The process takes place on a confidential, without prejudice basis and is entirely voluntary. A mediator is usually chosen who has experience with, and an understanding of, the area of dispute. Settlements can often be reached within a few hours when mediation is used, saving much time and money. Peer mediation is an example of this kind of process. It has been successfully used in schools, although in an informal way.

Arbitration and mediation are methods of dispute resolution that can

In what situations are the processes of arbitration and mediation best used to resolve differences?

be used in many circumstances. Neither is a substitute for court-oriented proceedings. Cases that turn on detailed points of law are most appropriately settled in court. Disputes that entail considerable technical evidence or the interpretation of a series of events may be more quickly resolved through arbitration, while disputes with a highly emotional content or which involve primarily questions of fact may best be resolved through mediation.

About judicial dispute resolution

In what situations is the process of judicial dispute resolution best used to resolve differences?

Judicial dispute resolution is a way of resolving cases without having to go to trial. The process is similar to a mini-trial where the judge hears summary presentations of the case by legal counsel in an informal setting. The judge may also hear from the parties, hear summaries of expert evidence and discuss resolution options. The judge then provides an opinion based on what he or she would decide if that same evidence were presented in court. The opinion stated by a judge in a 90 minute judicial dispute resolution session is non-binding and confidential. The notes of the judge are sealed or destroyed and the participants may either jointly settle matters, or continue their dispute in the courts. Parties considering judicial dispute resolution are encouraged to go through the Family Court Mediation Services program first.

BACKGROUNDER

Rights and responsibilities for families

Why is family law a unique area of law?

Family law covers the unique legal rights and obligations that arise between family members. Family relationships are not just legal relationships; they have emotional and social aspects. When there are family law issues, there are often psychological or other issues that need to be dealt with. For this reason, the justice system encourages people to deal with family issues in a holistic way, rather than just by using the formal court process. For example, the justice system may encourage people to attend "Parenting After Separation" courses, to use mediation or judicial dispute resolution and to seek the help of psychologists and counsellors, as well as lawyers to deal with their issues.

How does the legislation related to family law protect rights and outline obligations of the individual?

Family law includes a number of important aspects that can affect both youth and adults. There are legal issues that concern financial support for children, including the obligation of underage parents. Parents have rights and responsibilities besides financial ones, such as their legal obligations to their children.

Children have rights. These may become especially important if the child's lifestyle or liberty is an issue, such as when parents divorce or separate, medical decisions must be made about the child or a child wants to leave home.

To deal with a wide range of family matters, there is specific legislation as well as rules of court. Following is a summary of some areas of family law and the rights and responsibilities associated with each.

The *Marriage Act*

Parties can decide to reside together in a union. This union can be either a marriage or a common law union.

- A union is a marriage if it complies with the provisions of the *Marriage Act*.
- A person has to be 16 years of age or older for the solemnization and licensing of a marriage.
- If a person is under the age of 18, he or she needs the consent of both parents (or one parent if the other is deceased or separated).
- A person (under 18 years of age) may apply to the Court of Queen's Bench to dispense with the consent of parents. The court cannot grant an order dispensing with the consent of the parent or guardian for a person under 16, unless that person is pregnant or has a child.

The *Domestic Relations Act*

The rights of parties in common law unions are set out in the *Domestic Relations Act*, which is provincial legislation.

- A common law relationship as defined in the *Domestic Relations Act* is a relationship between two people of the opposite sex who, although not legally married, continuously cohabited in a marriage-like relationship for at least three years, or if there is a child of the relationship either by birth or adoption and the couple cohabited in a marriage-like relationship of some permanence.
- Under the *Domestic Relations Act*, parties to a common law union can obtain a separation. The grounds for judicial separation and/or divorce are adultery, cruelty and desertion.
- Upon a separation, a party to a common law union can apply for spousal or child support. If the application is for spousal support, the Court takes cognizance of the length of cohabitation of the parties, the function of each spouse and any agreement the parties have entered into.

The *Divorce Act*

The *Divorce Act* is federal legislation. It governs divorces throughout Canada. Divorce actions in Alberta are conducted in the Court of Queen's Bench.

Divorces are granted on the basis of "marriage breakdown." One definition of marriage breakdown is that the parties have been living separate and apart for at least one year immediately preceding the divorce proceedings, and living separate and apart at the time of commencement of proceedings. Other definitions include adultery or mental or physical cruelty of a kind that renders cohabitation intolerable.

The *Divorce Act* makes provision for spousal and child support from the time the parties separate in contemplation of divorce throughout the divorce proceedings and after the divorce is granted.

How are the values of society reflected in the *Child Welfare Act* and the *Protection Against Family Violence Act?*

What are the rights and obligations of parents to their children? What are the rights and obligations of children?

Do children's rights change in the case of the divorce or separation of parents?

To what extent should children be able to make their own medical decisions?

Living with the family – *Child Welfare Act*

Parents have a duty to provide adequately for the emotional, physical, educational and social well-being of their child. If there is any neglect with respect to this duty, the Director of Child Welfare has the authority and mandate to intervene under the *Child Welfare Act* to protect children's needs. The Alberta *Child Welfare Act* is provincial legislation.

- The Director may offer support services to help families overcome protection concerns. The nature of the support services can take the form of:
  - A parent aide or family support worker going to the family home and assisting the family
  - A psychological assessment being undertaken to determine the needs of parents and children
  - Parenting courses to help parents become better parents
  - Counselling sessions of various kinds.
- If the problems are too serious, the Director may apprehend the children, remove them from the home and place them in a group home. Children will be placed in foster care until the parents are able to resolve their personal/parenting difficulties. In this situation the parents (and children over age 16) can enter into a custody agreement with the Director of Child Welfare, or the Director of Child Welfare can obtain a Temporary Guardianship order.
- If there is no possibility of the children being returned to the parents' care within a reasonable time, the Director may apply for a Permanent Guardianship order. If the Permanent Guardianship order is granted, the children are permanently removed from parental care and placed in foster care or a group home.
- After a Permanent Guardianship order is granted, the children may be adopted.
- A family member or other person who has had continuous care of the children for six months or more can apply for a Private Guardianship order and Custody order. However, the court has the discretion to waive the six-month continuous care requirement. If guardianship or custody is granted, the children are placed in that person's care.

Living with the family – The *Protection Against Family Violence Act*

Family dynamics can become problematic. In such cases a family member may need assistance by way of a Court Order to prevent one family member from continuing a certain action against another family member. If there is genuine fear of a family member in terms of physical violence, property damage, forced confinement or sexual abuse, there is relief under the *Protection Against Family Violence Act*. An application can be made to the court for a Protection Order.

The definition of family violence does not include "reasonable" force used by a parent against a child by way of correction.

The Protection Order can be obtained *ex parte* on an emergency basis without notice to the respondent. A Protection Order under the *Protection Against Family Violence Act* may include the following provisions:

- Restraining the respondent from attending at any specified place attended regularly by the claimant
- Restraining the respondent from contacting or associating with the claimant
- Granting the claimant and other family members exclusive occupation of the family residence for a specified period
- Granting the claimant temporary possession of specified property
- Directing a peace officer to remove the respondent from the residence within a specified period of time.

Living with the family – Custody and access issues

On what basis should courts determine custody for children?

The courts are required to determine what is in "the best interest of the child." Upon separation, either parent can apply to the court for a determination as to which parent will have sole custody or whether there will be joint custody of children.

Establishing parentage

Sometimes there is a dispute about the paternity of a child. That is, a man denies he is the father of the child and states that he is therefore not responsible for child maintenance. In such cases, parentage can be established either under the *Parentage and Maintenance Act* or the *Domestic Relations Act*.

The *Parentage and Maintenance Act*

What is the obligation of unmarried underage parents to pay child support?

The *Parentage and Maintenance Act* legislates the rights of children of unwed parents and single mothers. Its provisions regarding presumption of paternity are similar to those of the *Domestic Relations Act*. Under this *Act*, any parent can be ordered by the court to pay child support and support to the custodial parent. The application can be made to the court by a parent, the child or a person who has care of the child. If the applicant is on social assistance, the government will apply to the court to start the support payments. If a person claims he is not the father, the *Act* allows for paternity testing. If paternity is proven, support will likely be ordered. It does not matter that the parents are not married, or how old the parents are. The *Act* also allows people to make agreements to pay child support, instead of going to court.

Solving family law issues

What legal processes exist to resolve family law issues? Should mediation be required in all family law disputes?

Family legal issues include:

- How to determine child support
- Parenting after separation and divorce (custody and access)
- Whether a child has been neglected by his or her parents
- Providing protection against violence.

The judicial system offers many processes, including:

- The *Child Support Guidelines*, a federal law that sets out clearly how much child support is payable according to the income of the payor and the number of children. Reference to the *Guidelines* has solved many disputes about who is to pay how much child support.
- Access to legal information and self-help kits. Resources, such as the Family Law Information Centres, the Protection and Restraining Orders Project and the Clerks of the Court, provide information, including self-help kits for people who want to apply for child support, Access Enforcement orders or Emergency Protection (against violence) orders.
- Dispute Resolution Services. Once a court application has been started, parties may be referred to mediation services, the "Parenting After Separation" course, or to an Intake Coordinator or Dispute Resolution officer. All of these resources help parties sort out and resolve issues before, or instead of, going to trial. Also, before or instead of having a full trial, the parties may meet with a judge, who will conduct a settlement conference or judicial dispute resolution session to explore ways to settle the legal issues.

GLOSSARY

Civil and family justice

To be **adjudicated** means to have been judged.

Answers are responses to questions.

The failure to observe or complete satisfactorily an act or directive is a **breach.**

Civil and criminal appeals are proceedings where a more senior court is asked to review a decision of a lower court or person. In appeals, lawyers argue about the application of rules of law.

A **civil claim** alleges the facts giving rise to the claim, the damages and/or remedies sought and any statutes upon which the plaintiff (the one claiming to be harmed) relies.

A dispute between two parties is in **civil litigation** when it has become the subject of a formal court action or lawsuit.

Common law is law that comes from the common people. It is not law that is imposed by some authority from on high and is based on custom. It is precedent and unwritten.

Contempt of court is an act of defiance of the court's authority or dignity, such as swearing at a judge, violence against a court officer or disobeying a court order to make restitution (pay for a wrong done).

The most common example of a **counterclaim** is a situation in which the defendant in a lawsuit not only defends the allegations made by the plaintiff, but also claims that the plaintiff caused the defendant some harm or damage.

Damages are a cash compensation ordered by a court to offset losses or suffering caused by another's fault or negligence. Damages are a typically requested when persons sue for breach of contract or tort.

In provincial court, the **dispute notes or notices** set out the facts supporting the defence that the defendant will argue at trial and any statutes upon which the defendant relies.

Dispute resolutions are processes or systems designed to resolve disputes that have arisen between parties without having to go to court.

An **estate** is made up of the assets, such as land, cash, stocks, bonds and personal property that a person accumulates during a lifetime.

Examination for discovery is an interview conducted by the other party's lawyer. After taking an oath or giving a solemn affirmation to tell the truth, the plaintiff must answer the defendant's lawyer's questions, or vice versa.

Foreclosures refer to a lender's actions of repossessing and selling a property for the borrower's default in mortgage payments.

Garnisheeing occurs when a person who is owed money is able to go to an employer to receive the money before it would go into a debtor's possession.

The concept of **intellectual property** encompasses such things as patents for inventions, trademarks, industrial secrets and copyright in songs and writing.

A dispute between two parties is in **litigation,** or being litigated, when it has become the subject of a formal court action or lawsuit.

Matrimonial property actions are civil claims that will divide the property obtained during a marriage between divorcing spouses.

Negligence involves a person's failure to act as a reasonable person would act in similar circumstances, giving rise to another's injury or harm. All citizens have a duty to ensure that their actions do not cause harm to others.

Originating notices are documents used to ask the court to review a decision made by an administrative board or tribunal.

Petitions set out the facts identified by the law under which the court is being asked to intervene. It ends with a suggested course of action for the court to consider. In past years, divorces were initiated by petitions.

Many provinces have **small claims** courts whose simplified proceedings allow for speedier hearings. A lawyer is not necessary or encouraged

A **statement of claim** alleges the facts giving rise to the claim, the damages and/or remedies sought and any statutes upon which the plaintiff (the person claiming to be harmed) relies.

A **statement of defence** sets out the facts supporting the defence that the defendant will argue at trial and any statutes upon which the defendant relies.

While they are not courts, **tribunals** are run by sets of established rules and are aimed at ensuring that all interested parties have the opportunity to make submissions before them.

Wills are written and signed statements, made by individuals, which provide for the disposition of their property when they die.

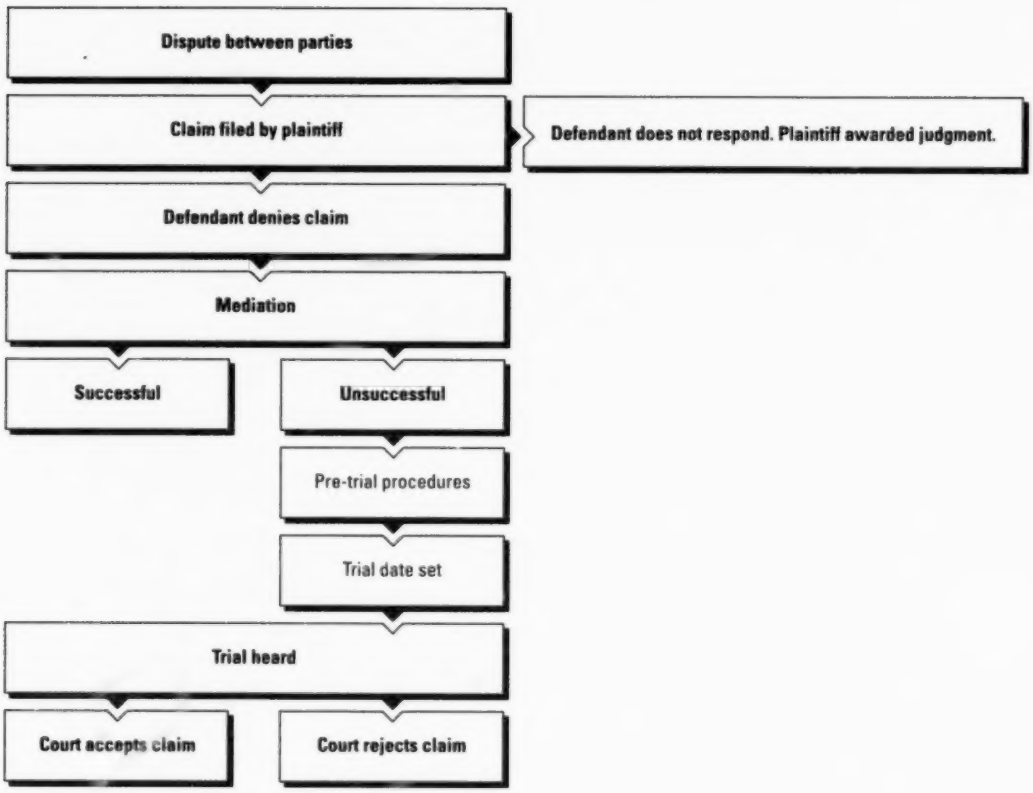
Civil and family justice

Charts and visual organizers

The charts and visual organizers can be used to reinforce, enrich and extend the content provided in the summary and backgrounders.

PROCESS FLOWCHART

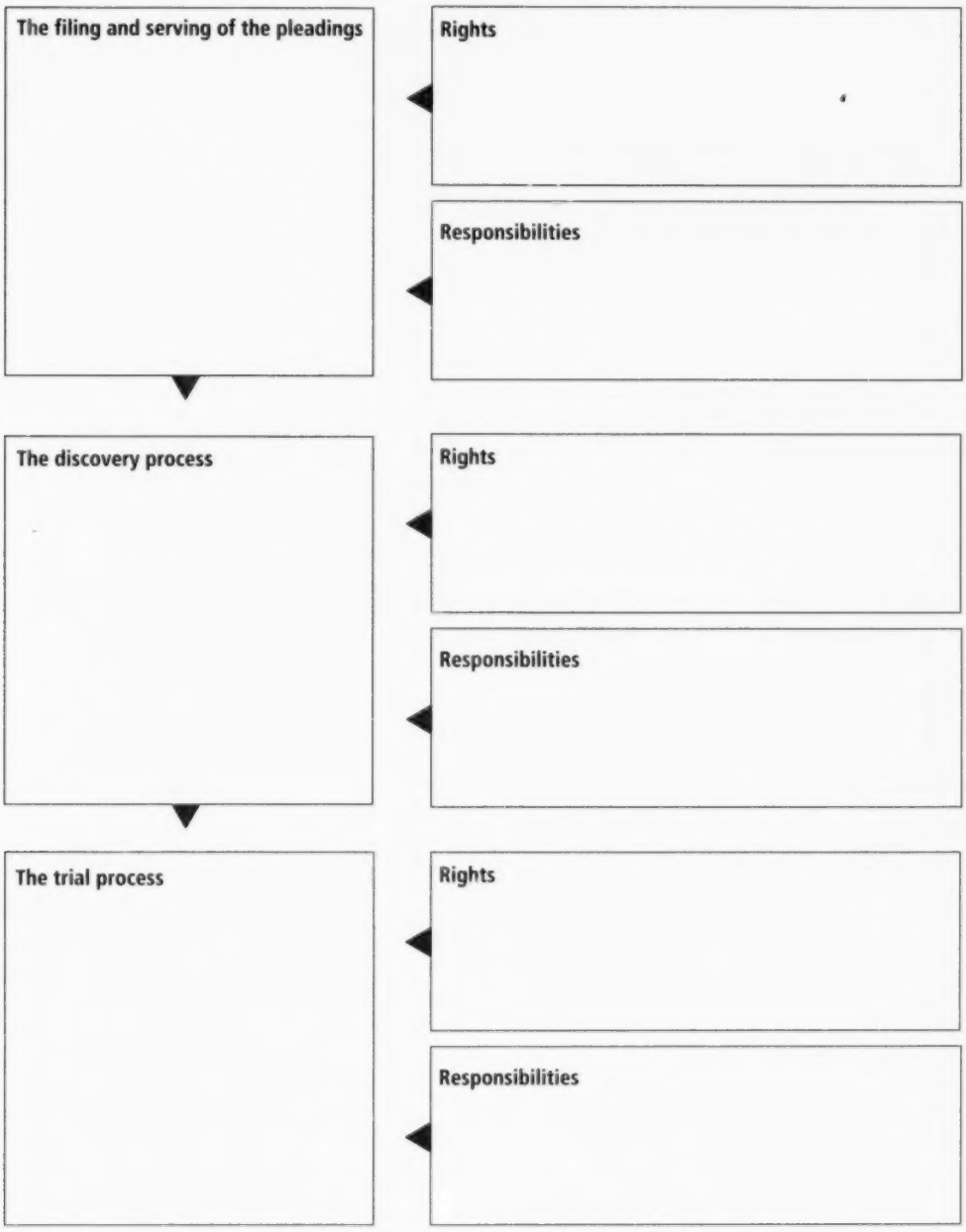
The process of resolving civil claims



VISUAL ORGANIZER

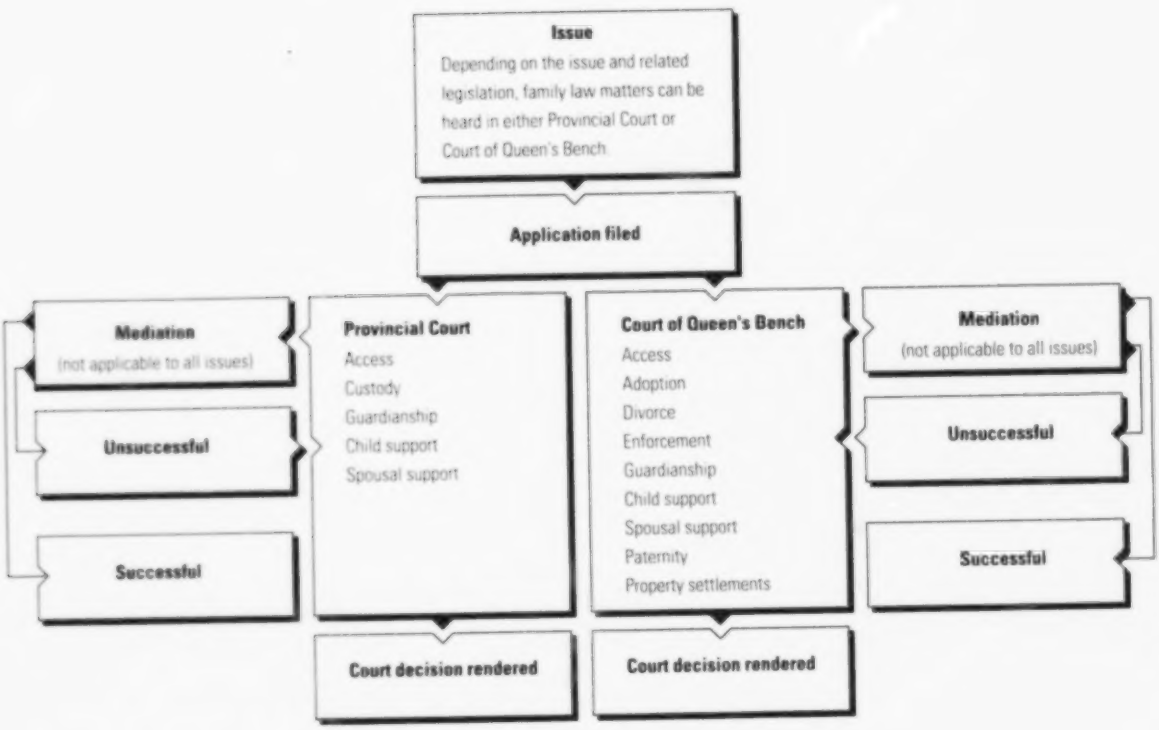
Comparison flowchart

How does the civil justice system ensure that rights are protected and responsibilities upheld? Identify the rights of individuals in each step of the civil justice process in the first box. Identify the responsibilities of the individual in the second box.



PROCESS FLOWCHART

The process of resolving family law disputes



VISUAL ORGANIZER

Issues organizer

What is the issue?

What are the alternatives?

A.

B.

C.

What are the advantages of each alternative?	What are the disadvantages of each alternative?
A.	A.
B.	B.
C.	C.

Which alternative is the best choice? Why?

How can this alternative be ensured within the justice system?

6 Youth justice

This thematic section can be used to teach generalizations and concepts related to rights and responsibilities. Learning about how young people are dealt with in a criminal legal context provides opportunities for students to understand their special status under the law and better appreciate the reasons for and consequences of these rights and responsibilities.

CRRICULAR OVERVIEW

Youth justice

The following outcomes from the Alberta Social Studies 10 Program of Studies Topic B: Citizenship in Canada can be met through the youth justice system thematic section.

Critical and creative thinking outcomes

This resource encourages the development of the following critical and creative thinking skills.

Students should acquire the knowledge and skills necessary to:

- Examine the process whereby decisions affecting themselves and society are made
- Design and evaluate alternative methods of providing for the protection of human rights in society
- Examine how questions that involve the needs of the individual and the needs of the state are resolved.

Inquiry issues and questions

This resource supports the use of issues and questions for inquiry from the Alberta Social Studies 10 Program of Studies.

- What responsibilities does the individual have in Canadian society?
- How are human rights protected in Canada?

Knowledge outcomes

This resource develops generalizations, key understandings, concepts and related facts from the Alberta Social Studies 10 Program of Studies.

Theme I: Politics and government

Politics are a feature of everyday life

- Decision making
- Organization

  Identify examples of consensus, majority rule, influence, negotiation and compromise at school, community, provincial and national levels (laws, services, etc.).

Theme II: Citizen participation

Political differences are resolved through a variety of approaches

- Democratic process
- Majority and minority rights
- Negotiation and compromise

  Identify ways of resolving differences

  - Legal actions.

Theme III: Rights and responsibilities

Rights and responsibilities are associated with citizenship

- Rights

  Examine rights (individual and collective) in Canadian society:

  - Human
  - Civil
  - Legal
  - Minority
- Freedoms
- Justice
- Equality
- Responsibilities

  Examine responsibilities in Canadian society:

  - Legal (jury duty)
  - Moral (respect for the rights of others)
  - Social (participating in community activities; e.g., volunteering).

There are various means that help to protect and preserve rights in Canada

- Entrenchment of rights
- Safeguarding rights

  Explain how the following help to protect human rights:

  - Courts.

6 Youth justice

Focus questions and activities

In this thematic section, there are three focus questions and a variety of learning activities.

The focus questions and activities in the youth justice thematic section are designed to:

- Organize the information in this thematic section around the three themes in the Alberta Social Studies 10 Program of Studies Topic B
- Involve students in critical and creative thinking activities
- Establish questions and issues for inquiry.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: Youth justice
- Backgrounder: The development of a youth justice system
- Websites

The Alberta Justice website provides information on the development of the youth justice system at www4.gov.ab.ca/just/lawu/roles11.html.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How do governments make decisions that affect youth and society?

The historical context of youth justice

Have students work in small groups to study the historical context of youth issues facing Canadian citizens today. Ask each group to identify factors that influenced political and social decision making about a justice system for youth. Have each group look for evidence of:

- Political decisions (actions and legislation)
- The special needs of youth within the justice system
- Negotiation and compromise between the needs of adults and those of youth.

Timeline

Have students work in small groups to develop a timeline on the development of the youth justice system in Canada. Ask each group to use information from different sources, including classroom textbooks or resources, library resources and the Internet. Have groups construct their timelines using both textual and visual information.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: Youth justice
- Backgrounder: The rights and responsibilities of youth
- Chart: A comparison of the *Young Offenders Act* and the *Youth Criminal Justice Act*
- Websites

Several websites offer information on the youth justice system.

For examples of case studies, go to www.extension.ualberta.ca/youthjustice/.

For stories relating to youth justice issues that could be adapted for classroom discussion or developed into scenarios for student's court activities, go to www.extension.ualberta.ca/youthjustice/justice.html.

The federal Department of Justice websites, http://canada.justice.gc.ca/en/ps/yj/index.html and http://canada.justice.gc.ca/en/ps/yj/yoas1.html, provide information on the Youth Justice Renewal Initiative.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

How are the needs of the individual balanced against the needs of the state?

Analyzing the case

Ask students to research the current context of youth justice and then write a case study on balancing the needs of the individual with the needs of society in the youth justice system. Have them consider:

- The facts of the story: What laws have been established in the *Youth Criminal Justice Act*? Who is affected by these laws? How are individuals affected? How is society affected?
- The issues involved: Can these laws be interpreted in different ways? What are the different perspectives or opinions regarding the individual and society?
- The arguments: What are the opinions and values on both sides of the issues? What are the positive and negative effects of each opinion?
- Decisions: What is your opinion? Can you support it with arguments and evidence?

Issue paper

Have students write an issue paper that outlines and defends a personal position on the justice and fairness of the youth justice system in Alberta and Canada. Have them consider the following questions:

- Is the youth justice system fair to youth? Is it fair for society?
- Is justice served within the current youth justice system? How?

Take a stand

Have students respond to the following statement in a position paper or an oral presentation:

- "The new *Youth Criminal Justice Act* is an improvement over the *Young Offenders Act*."

Ask students to work individually, or in small groups, to develop their position. Use the following questions as a guide:

- What are the differences between the *Young Offenders Act* and the *Youth Criminal Justice Act*?
- What advantages does the *Youth Criminal Justice Act* have over the *Young Offenders Act*?

A students' court

Work with the class to set up and conduct a students' court on different issues facing youth today. Have students work in small groups to develop a scenario that involves a youth issue, or use a description of an actual case. The scenario should provide details about:

- The facts of the case
- Who is involved
- The issues involved in the case.

The students' court format can be organized much like a debate. However, there is an additional role: a panel of students listens to the opposing viewpoints and makes a judgment on the issue as a judge would in a court. The students' panel can be asked to confer about their final judgment in front of the class. To conduct the students' court process, have students take on the following roles:

- A students' panel (a group of students who will listen to the facts of the issue and make a judgment)
- A group that presents one side of the issue
- A group that presents another side of the issue.

Horseshoe debate

Have students work in small groups to research and prepare position statements on issues such as these:

- Does the law deal effectively with youth violence?
- Is the current legislation on youth offenders too lenient?
- Should youth ever be transferred to adult court?
- Is it fair and equitable to make distinctions between youth or adult behaviour and accountability?

Ask students to prepare brief statements that represent both sides of the debate, along with supporting information for each position to use in discussion and questioning. Arrange classroom seating in a horseshoe design, with students seated in each half supporting opposing positions. Have each half of the class present a brief statement on opposing sides of the issue. Then allow general discussion and questioning based on the statements provided by students.

Teacher preparation

These student and teacher resources support the activities below.

- Summary: Youth justice
- Backgrounder: The rights and responsibilities of youth
- Chart: A comparison of the *Young Offenders Act* and the *Youth Criminal Justice Act*
- Visual organizer: Retrieval chart
- Websites

A variety of sites provide information on the new *Youth Criminal Justice Act* and the roles and responsibilities of youth within the justice system, including The Public Legal Education Network of Alberta at www.plena.org and the John Howard Society site at www.johnhoward.ab.ca.

For information about Bill C-7, the *Youth Criminal Justice Act*, go to www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-7/C-7_1/C-7_cover-e.html.

For information about the *Universal Declaration of the Rights of the Child*, go to www.unicef.org/crc/crc.htm.

- Assessment

Assess student work by using the rubrics provided in the Appendix. Adapt the rubrics to meet the needs of students, the content and focus of the activities, and the curricular outcomes identified in this thematic section.

What are the rights and responsibilities of youth within the justice system?

Role play

Have students work in small groups to develop a role-play scenario that depicts one area of the youth justice system. Ask groups to select an area from the following list:

- The right to counsel
- Statements of the accused or confessions
- Sentences
- Records.

Have students research this area of the *Youth Criminal Justice Act* and develop their scenario around an example that illustrates it. Have them present their role-play scenarios to other groups or to the entire class.

Comparing rights and responsibilities

Have students review the concepts of rights and responsibilities. Ask them to complete a retrieval chart that analyzes rights and responsibilities for youth from the perspectives of:

- The Canadian government (through the *Youth Criminal Justice Act*)
- Youth
- Other members of society.

Ask students to interview at least three other students to gather differing perspectives on how youth view their rights and responsibilities. Then have students summarize their results on the retrieval charts.

Media search

Ask students to individually look for examples of articles in the media that relate to youth justice. Have students focus on the following question:

- Is there justice and equity for youth in today's society?

Have them work with a partner to construct a poster that provides:

- A statement that answers the question
- A short essay that discusses the extent to which youth rights are protected
- Examples from media articles that illustrate and support their position.

Guest speakers

Work with students to develop a list of speakers to invite into the classroom to provide additional information or perspectives on the youth justice system. Guest speakers could include individuals who present differing perspectives on youth justice, including a lawyer, a police resource officer, a youth who has had experiences with the youth justice system, a business owner who has had problems with shoplifting or a judge. Have each student work with a partner to research contact information for speakers and develop an invitation to speak to the class that includes:

- The purpose of the request
- The topics or issues being studied
- The information students are interested in.

Work with students to contact the potential speakers and present the invitation.

Making comparisons

Have students, individually or in small groups, research the rights and responsibilities of youth in other provinces in Canada or in other countries. Have them use classroom resources and textbooks, library sources or the Internet to examine laws and societal expectations for youth justice. Students can be asked to use the *Universal Declaration of the Rights of the Child* to compare different judicial systems for youth. Ask students to find out which nations have signed the *Declaration* and which have not. Have students share their findings with another small group or the entire class.

Summary, backgrounders and glossary

The summary, backgrounders and glossary provide information about youth justice and can be used in a variety of ways:

- The summary of key content provides a synthesis and advance organizer for the information in the thematic section. The summary can be used as an introduction to the section, a review of key content or an overview of the theme for class or group activities.
- The backgrounders provide information on different aspects of the judicial system. Questions are included with each backgrounder to provide opportunities for guided reading, independent research, teacher-led or self-directed study and critical thinking development.
- The glossary lists key terms and definitions. These terms appear in bold type throughout the summary and backgrounders.

SUMMARY

Youth justice

The development of a youth justice system

Traditions in youth justice and the *Juvenile Delinquents Act*

- English **common law** provides the framework for the treatment of youthful offenders in Canada.
- Before 1300, the law did not see age as an issue with respect to criminal conduct. It simply punished the wrongdoer.
- In 1892 Canada's *Criminal Code* specifically provided for children to be tried separately from adults and without publicity.
- Provisions were enacted in a climate of concern for child welfare issues, including child labour; poor, abused or abandoned children; and public education. This approach has been described as a "welfare" view of youth justice.
- The *Juvenile Delinquents Act* passed in 1908 was based on a common belief at the time – that young people are not accountable or responsible for their actions. If a young person had done wrong, it must be society's fault. Society was considered responsible for instilling adequate morals and values in young people.

The *Young Offenders Act*

- The 1984 *Young Offenders Act* restricted its **jurisdiction** to criminal matters.
- It created a separate court system and process for dealing with crimes committed by youths.
- The term "juvenile delinquent" was no longer used in legal documents and actions, but rather the term "young offender."
- The *Act* was a move away from the "welfare" view of children and the law, and towards one that recognized the responsibility of the child for his or her actions.
- The effect of the crime on society was also considered relevant.

The *Youth Criminal Justice Act*

- The *Act* states that the overriding fundamental purpose is protection of the public, which is to be achieved by crime prevention, meaningful consequences, and the rehabilitation and reintegration of youth criminals into society.
- The *Act* deals with how the youth justice system is different from the adult system, the purpose of the measures that are taken and the special considerations that apply to proceedings.

The rights and responsibilities of youth

Principles of youth justice

- Certain characteristics that differentiate youths from adults justify a different court system with judges and court officials who are aware of these differences.
- They also justify special rules governing the evidence that can be used in prosecuting a young offender and specific dispositions, or sentences, for those who are convicted.

Safeguards in the youth justice system

While the general processes of a criminal court are preserved in youth courts, additional safeguards are built in to meet the specific needs of youth within the justice system. These safeguards involve setting different conditions for the right to counsel, statements of the accused, sentences and records.

The right to counsel

Everyone accused of a criminal offence has a right to counsel by virtue of Section 10 of the *Charter of Rights*. The youth justice system recognizes that accused youth may be inherently incapable of defending themselves. A youth has an absolute right to have counsel in criminal matters.

Statements of the accused or confessions

Because children and youths can be more easily intimidated by adults, and especially authority figures, Parliament has provided special additional protection for youths in respect of any statements that they make.

Sentences

- The *Youth Criminal Justice Act* encourages all members of the criminal justice system – police, prosecutors, youth and court judges – to actively look for innovative ways of dealing with the young offender.
- For the majority of youthful offenders, police and prosecutors are urged to consider remedies that do not involve the court, that is, **diversion and community conferencing.**

Community involvement

- The *Youth Criminal Justice Act* emphasizes community involvement in the "healing" and **reintegration** of the youthful offender through community-based advisory bodies.

Judicial sanctions

When a young person proceeds through the formal court process and is found guilty, Parliament has provided a vast array of remedies for youth justice court judges to apply.

- A reprimand provides the last chance for a youth to avoid having a formal record of any sort.
- A discharge is more than a reprimand but less than a conviction. The youth does not end up with a formal "criminal record" since no conviction is entered.
- A youth justice court judge may impose a fine of up to $1,000.
- Compensation and restitution orders recognize that the victim ought to be placed in the same position he or she was in prior to the crime.
- The judge may order a young offender to perform community service under the supervision of a probation officer.
- A youth justice court judge may make prohibition orders such as driving disqualifications or firearms prohibitions.
- A probation order requires the youth to comply with the conditions it sets forth. The length of the order cannot exceed two years.
- If the Provincial Director has designated programs as being appropriate and available, the youth justice court judge may order a young offender into intensive support and supervision programs.
- Under the *Young Offenders Act* there were two types of custody and supervision orders: open and closed.
- Deferred custody and supervision orders are a form of incarceration that is served in the community under tight restrictions. Only offenders who do not pose a danger to the community may be granted conditional sentences.
- When a young person is convicted of first degree murder and is sentenced as a youth, the court can impose up to six years of actual incarceration followed by a period of community supervision under conditions.
- If the young person has been convicted of murder, attempted murder, manslaughter or aggravated sexual assault, or has a history of serious crimes of violence, the court can consider an **intensive rehabilitative custody order.**

Adult sentences or transfers

- Under the *Youth Criminal Justice Act*, a "transfer" becomes part of the sentence and the issue is dealt with only after a finding of guilt.
- This procedure allows the Crown to decide whether the youth court system is appropriate or not, given the ultimate verdict. It avoids forcing a **prognostication** based on the allegations in the police report.

Records

- Stated in the most general terms, a youth's criminal record effectively ceases to exist five years (at most) after the sentence is concluded.
- If the person **reoffends** as a youth, the clock restarts on the entire record.
- If the person reoffends after becoming an adult but before the youth record is destroyed, the entire record is converted into an adult record, even the youth court convictions. They all become permanent entries on the criminal record.
- If the youth was convicted of a **presumptive offence**, whether sentenced as a youth or an adult, the record is kept indefinitely.

Protecting rights and ensuring responsibilities

- The youth criminal justice scheme has become enormously complicated, as lawmakers have tried to address the many competing and legitimate viewpoints.
- Although the *Youth Criminal Justice Act* is controversial and cumbersome, it serves a very specific need in the Canadian justice system.
- Utilizing all of the community's resources, the legislation focuses on accountability and responsibility. The ultimate goal is protection of the public and the development of youth into contributing members of society.

BACKGROUNDER

The development of a youth justice system

Traditions in youth justice and the *Juvenile Delinquents Act*

Describe how the treatment of youth crime has changed over the centuries.

English **common law** provides the framework for Canadian treatment of youthful offenders in Canada. Before 1300, the law did not see age as an issue with respect to criminal conduct. It simply punished the wrongdoer. In the 1600s English jurists settled on age 7 as the minimum age for criminal responsibility. This was the same age the Romans had used since 407 A.D.

How has the youth justice system been seen as different from the adult justice system?

Since very early times, Canadian lawmakers have taken a less harsh view towards youth crime than their English counterparts. In 1857 (ten years before Confederation), judges of Upper and Lower Canada were given the authority to deal with young offenders. This allowed the child to be dealt with quickly and outside the strict criminal justice process. In 1892 Canada's *Criminal Code* specifically provided for children to be tried separately from adults and without publicity. These provisions were enacted in a climate of concern for child welfare issues, including child labour; poor, abused or abandoned children; and public education. This approach has been described as a "welfare" view of youth justice.

With the passing of the *Juvenile Delinquents Act* in 1908, Parliament created a separate juvenile court to concentrate on the specific needs and interests of the child. Under this legislation, criminal conduct was treated as a symptom of a developmental problem, with the judge very much in the role of a welfare worker. The assumption was that the child could be reformed through treatment. It has been said that the juvenile court's role was that of a "stern but understanding parent."

At the time, people commonly believed that young people are not accountable – or responsible – for their actions. If a young person had done wrong, it must be society's fault. Society was considered responsible for instilling adequate morals and values in young people.

The *Young Offenders Act*

What youth justice perspectives are represented by the change from the *Juvenile Delinquents Act* to the *Young Offenders Act*?

The 1984 *Young Offenders Act*, which replaced the *Juvenile Delinquents Act*, restricted its **jurisdiction** to criminal matters. Provincial offences were to be dealt with under separate provincial legislation. In most cases the resulting provincial schemes were tempered copies of the federal scheme.

The *Young Offenders Act* created a separate court system and process for dealing with crimes committed by youths. The term "juvenile delinquent" was no longer used in legal documents and actions, but rather the term "young offender." This Act was a move away from the "welfare" view of children and the law and towards one that recognized the responsibility of the child for his or her actions. The effect of the crime on society was also considered relevant.

The *Juvenile Delinquents Act* had allowed each province to decide the age at which a child became subject to the criminal law, and the result was huge disparities. The *Young Offenders Act* stipulated a uniform minimum and maximum age throughout Canada: from 12 years up to and including 17 years of age.

Even with occasional amendments that made it easier for a youth to be dealt with in ordinary adult court, many Canadians believed the *Young Offenders Act* was soft on crime. Politicians regularly faced public scorn when youths received inadequate sentences for serious offences. At the same time they were also criticized for the *Act's* failings related to community-based processes. The criticisms reflected society's tremendously different views and goals about what should be included in a youth justice **statute**. It was clear that a large segment of the public, on both sides of the issue, had lost confidence in the *Young Offenders Act*.

The *Youth Criminal Justice Act*

How did the different functions of government contribute to the establishment of a revised *Youth Criminal Justice Act*?

What methods did the government use to resolve issues in revising the youth justice system?

The federal, provincial and territorial ministers responsible for Justice formed a Task Force on Youth Justice in January 1995. All Canadian jurisdictions were represented except Quebec, which thought that the *Young Offenders Act* did not have to be replaced. The Task Force report was released in 1996. During this same period, the House of Commons commenced a separate review that included public hearings. The government of Alberta also initiated public hearings on youth justice.

The *Youth Criminal Justice Act* was introduced to Parliament on March 1, 1999, was passed in early 2002 and will be proclaimed into effect in April 2003. This delay will allow **law enforcement** and prosecution agencies time to prepare for its implementation.

The *Youth Criminal Justice Act's* overriding fundamental purpose is protection of the public, which is to be achieved by **crime prevention**, meaningful consequences, and the rehabilitation and reintegration of youth criminals into society. The *Act* specifically deals with how the youth justice system is different from the adult system, the purpose of the measures that are taken and the special considerations that apply to proceedings.

This "something for everyone" approach leaves it open to the same criticism that was leveled at the *Young Offenders Act*. However, it definitely forces a court to consider all of the differing points of view.

BACKGROUNDER

The rights and responsibilities of youth

Principles of youth justice

Why do we need a separate criminal justice system for youths? Why can we not apply the rules used in ordinary criminal court to youth?

Children aged 12 to 18 who break the law share distinctive and common behavioural traits that make them different from adult offenders. Generally speaking, young people are greater risk-takers, and they have less ability to think about the long-term consequences of their actions. As a group, they are highly susceptible to negative peer influences. Finally, there is evidence that people in this age group, particularly those under 14, are more willing to admit blame when accused and to waive their rights, even when they are given the same type of warnings and assistance that are given to adults who are accused.

All of these characteristics that differentiate youths from adults justify a different court system with judges and court officials who are aware of these differences. They also justify special rules governing the evidence that can be used in prosecuting a young offender and specific dispositions, or sentences, for those who are convicted.

Safeguards in the youth justice system

Summarize each of the following safeguards in the justice system and discuss how they are designed to meet the specific needs of youth:
•The right to counsel
•Statements of the accused or confessions
•Sentences.

While the general processes of a criminal court are preserved in youth courts, additional safeguards are built in to meet the specific needs of youth within the justice system. These safeguards involve different conditions that are set for:

- The right to counsel
- Statements of the accused or confessions
- Sentences
- Records.

Right to counsel

Everyone accused of a criminal offence has a right to **counsel** by virtue of Section 10 of the *Charter of Rights*. If an adult cannot afford a lawyer, he or she may apply to a **legal aid** service for assistance.

Young persons who are charged with crimes may also apply to Legal Aid to fund private counsel. If assistance is approved, then the accused youth may hire a lawyer of his or her choice and Legal Aid will pay the **retainer**. If, however, the accused youth is turned down for coverage (for whatever reason), he or she has an absolute right to the assistance of legal counsel. A youth court judge has the right to appoint counsel for an accused youth from the outset of the proceedings. This is a significant enhancement to the general right to counsel that is shared by all accused persons. In Alberta, Legal Aid has staff counsel who will step in to represent any youth charged with an offence. This important difference between the two systems

recognizes that accused youth may be inherently incapable of defending themselves against a criminal charge.

Statements of an accused or confessions

Any time an accused's statement is to be used as evidence, whether the accused is an adult or a youth, it must prove beyond a reasonable doubt that the statement was given voluntarily. Because children and youths can be more easily intimidated by adults, and especially authority figures, Parliament has provided special additional protection for youths in respect of any statements that they make.

The *Youth Criminal Justice Act* contains these provisions in Section 146. A statement to a police officer or other "person in authority" is not admissible unless:

- The statement is proven to be voluntary
- Police have explained before the statement is made, and in language that is appropriate to the youth's age, that the young person is under no obligation to make the statement, that the statement can be used against him or her, that the youth has the right to consult a parent and a lawyer before saying anything, and that a parent and lawyer may be present when the statement is made
- The youth has a reasonable opportunity to talk to a lawyer and a parent or adult relative or other appropriate adult, and has been given the opportunity to make the statement in the presence of those persons.

As with the *Young Offenders Act*, a statement made spontaneously does not have to comply with these requirements. So, if a police officer came upon a body and the accused blurted out, "I killed him!" the statement could be admissible even though the police did not first comply with the Section 146 requirements of the *Youth Criminal Justice Act*. When the police arrest a youth and want to question him or her further, though, they have to comply fully with the safeguards. As well, if the youth misleads police regarding his or her age so that the police do not believe it is necessary to comply with the written waiver, the statement may still be admissible.

Sentences

The terminology of the *Young Offenders Act* referred to sentences as **"dispositions."** The *Youth Criminal Justice Act* uses the same word as the *Criminal Code*: a "sentence."

The *Youth Criminal Justice Act* encourages all members of the criminal justice system – police, prosecutors, youth and court judges – to actively look for innovative ways of dealing with the young offender. For the majority of youthful offenders, police and prosecutors are urged to consider remedies that do not involve the court, that is, **diversion and community conferencing**.

The *Youth Criminal Justice Act* places greater emphasis on the use of police discretion not to lay a charge by formalizing this process. The *Act* gives police the authority to set up their own programs. Where police do lay a charge, the prosecutor may deal with it by way of a formal "warning." A warning does not result in any conviction but alerts the youth's parent(s) that a problem exists. The thrust of these initiatives is to recognize that some youths, simply as a result of an initial contact with the police and the justice system, will not commit further offences; more drastic state intervention is not necessary to deter these youths.

Prosecutors or the police may feel that a warning is not enough. They may feel that the youth must perform some concrete action, either to impress consequences upon him or her, or to demonstrate that the youth appreciates the wrong committed. In such cases **"extrajudicial sanctions"** may be employed. Also known as "diversion," this program allows the youth to perform community service work or some other action (e.g., a letter of apology, restitution, reparation of damage), after which the criminal charge is withdrawn. This program can only work if the youth accepts responsibility for his or her actions.

Community involvement

What is a "youth justice committee"? What values is it based on?

The *Youth Criminal Justice Act* emphasizes community involvement in the "healing" and **reintegration** of the youthful offender through community-based advisory bodies.

A "youth justice committee" is a restorative justice technique intended to bring the offender, the victim and the community together to resolve the harm caused by the offence. It gives the victim an opportunity to impress upon the offender the consequences of his or her behaviour.

Judicial sanctions

Define and give your own example of each of the following judicial sanctions:

- Reprimand
- Discharge
- Fine
- Compensation and restitution orders
- Community service
- Prohibition orders
- Probation
- Intensive support and supervision program
- Custody and supervision order
- Deferred custody and supervision orders
- Murder sentences
- Intensive rehabilitative custody order.

When a young person proceeds through the formal court process and is found guilty, Parliament has provided a vast array of remedies for youth justice court judges to apply.

• Reprimand

A reprimand provides the last chance for a youth to avoid having a formal record of any sort. If the judge is persuaded that the public interest does not require keeping a formal record of the finding of guilt, the judge may reprimand the youth and impose no further sanction.

• Discharge

A discharge is more than a reprimand but less than a conviction. The youth does not end up with a formal criminal record since no conviction is entered. However, the police keep a record of the fact that a discharge was granted. A discharge entitles a youth to answer "no" to the question, "Have you ever been convicted of a criminal offence?"

Discharges may be absolute or conditional. If the judge grants an absolute discharge on the spot, there are no further requirements. A conditional discharge is similar to a probation order. If the youth complies with the accompanying conditions, the discharge crystallizes and becomes absolute. If the youth does not comply, the discharge is not complete. The youth may then be charged with a separate offence under Section 137 for **failing to comply** with an order or disposition.

• Fine

A youth justice court judge may impose a fine of up to $1,000. Furthermore, the judge may prescribe how and when the fine is to be paid; e.g., $100 a month. Section 54 requires the judge to consider the ability of the offender to pay the fine.

• Compensation and restitution orders

The *Youth Criminal Justice Act* is intended to address restorative justice principles. Compensation and restitution orders are fundamental components of this approach since the victim ought to be placed in the same position he or she was in prior to the crime.

• Community service

The judge may order a young offender to perform community service under the supervision of a probation officer. The judge prescribes when and how the performance is to be completed. A maximum of 240 hours of service can be ordered and community service must be performed for a program approved by the Provincial Director or for a person or organization that consents to having the youth working for or with them.

• Prohibition orders

A youth justice court judge may make any prohibition order that exists in any federal legislation, including the *Criminal Code*. *Criminal Code* Section 161 prohibitions are the only exception. **Driving disqualification** is one of the more common types of prohibitions imposed. In respect of firearms and weapons prohibitions, the *Youth Criminal Justice Act* includes the same mandatory prohibition scheme as the *Criminal Code* for serious crimes of violence. It also requires that youth judges seriously consider a **discretionary prohibition** for all firearms offences and less serious crimes of violence.

• Probation

A probation order requires the youth to comply with the conditions it sets forth. The length of the order cannot exceed two years. Since probation orders are a rehabilitative tool, terms such as counselling and curfews are common. **Punitive terms,** such as community service work, may also be included so that all of the sentencing objectives are addressed. Failure to comply with the terms of the probation order is a separate offence under Section 137 of the *Youth Criminal Justice Act*.

• Intensive support and supervision program or non-residential treatment program

If the Provincial Director has designated programs as being appropriate and available, the youth court judge may order a young offender into these programs.

• Custody and supervision order

Under the *Young Offenders Act* there were two types of custody: open and closed. Open custody allowed the youth to attend school, programs or employment during the day but spend the evenings in a **custodial institution.** Closed custody was the equivalent of jail. Both of these were the last resort for sentencing judges, when protection of the public and denunciation were paramount sentencing considerations and when the rehabilitation of the youth could be best or exclusively attained in a secure setting. Under the *Youth Criminal Justice Act* this distinction has been eliminated. Now the

judge orders a period of custody and a period of community supervision to follow. This regime is similar to the adult parole system.

• Deferred custody and supervision orders

Deferred custody and supervision orders are a form of **incarceration** that is served in the community under tight restrictions. Only offenders who do not pose a danger to the community may be granted conditional sentences. The conditional sentence is a period of incarceration. If the offender violates the terms of the conditional sentence, the judge may order the offender to serve some or all of the remaining sentence in a prison. A deferred custody order cannot exceed six months and is only available when the youth has been convicted of a crime that did not cause, or attempt to cause, bodily harm to the victim.

• Murder sentences

When a young person is convicted of **first degree murder** and is sentenced as a youth, the court can impose up to six years of actual incarceration followed by a period of community supervision under conditions. For **second degree murder** the maximum period of incarceration is four years followed by community supervision. This regime approximates the adult correctional system's parole scheme, where **reintegration** is given high priority at the end of a lengthy period of incarceration.

• Intensive rehabilitative custody order

If a young person has been convicted of murder, attempted murder, manslaughter or aggravated sexual assault, or has a history of serious crimes of violence, the court can consider an **intensive rehabilitative custody order.** This sentence, which cannot exceed two years, is served in a secure medical facility such as Alberta Hospital.

Adult sentences or transfers

"The *Youth Criminal Justice Act* has completely replaced the transfer process." Explain what this statement means.

Under the *Young Offenders Act*, when a youth was accused of a particularly serious crime or where the accused was particularly dangerous, he or she could be transferred to ordinary (adult) court. This procedure was very difficult and much criticized. The transfer process was cumbersome, to say the least.

The *Youth Criminal Justice Act* seeks to remedy this situation with a complete replacement of the transfer process. "Transfer" becomes part of the sentence and the issue is dealt with only after a finding of guilt. This procedure allows the Crown to decide whether the youth court system is appropriate or not, given the ultimate verdict. It avoids forcing a **prognostication** based on the allegations in the police report.

The age for presumptive transfers has been lowered to 14 years, although provinces may choose to raise this age up to 16 years. A new category of presumptive offence called the "serious violent offence" has been created. This category applies to crimes where the allegation is that the accused caused or attempted to cause serious bodily harm. A serious violent offence can engage the automatic transfer process. The accused youth must have two prior convictions for such offences; on the third, he or she is automatically "transferred." The two prior convictions must have been designated as a "serious violent offence" at the time the verdict was entered. If that determination is not made and entered on the record, the prior conviction does not count towards an automatic transfer.

Records

Do you agree that a youth's criminal record should cease to exist five years (at most) after the sentence is concluded? Why or why not?

One of the fundamental precepts of the *Young Offenders Act* and, to a greater extent, of the *Youth Criminal Justice Act*, is to treat youth crime as a function of the growth process. As young people learn and grow, they naturally make mistakes, some of which may be criminal in nature. The *Youth Criminal Justice Act's* increased emphasis on extrajudicial sanctions and enhanced sentencing options, combined with the overall principles articulated in Sections 3 and 38, demonstrates that the intention is to place youth on the right path. A recurring theme throughout the regime is that mistakes made as a youth should not necessarily haunt a person into his or her adult years. For that reason, the *Young Offenders Act's* restrictions on publication and its record-keeping provisions have been retained and enhanced in the *Youth Criminal Justice Act*.

Stated in the most general terms, a youth's criminal record effectively ceases to exist five years (at most) after the sentence is concluded. If, however, the person **reoffends** as a youth, the clock restarts on the entire record. If the person reoffends after becoming an adult but before the youth record is destroyed, the entire record is converted into an adult record, even the youth court convictions. They all become permanent entries on the criminal record. If the youth was convicted of a **presumptive offence,** whether sentenced as a youth or an adult, the record is kept indefinitely.

Protecting rights and ensuring responsibilities

What are the most effective ways of ensuring that young offenders do not repeat their offences?

The youth criminal justice scheme has become enormously complicated as lawmakers have tried to address the many competing and legitimate viewpoints. As Senator Lorna Milne has said, "The issues surrounding youth crime are complex, frustrating and perplexing, indeed, gut wrenching and emotional."[1]

Canada's most recent youth justice legislation required well over three years of rewriting and debate before coming into force. Even so, many of its provisions are unclear, and courts will be called upon to clarify both their scope and application. Amendments to the legislation will certainly be required to plug holes that were missed and to address complications that arise as the *Youth Criminal Justice Act* is implemented. Societal pressures may also cause Parliament to revisit and revise portions of the *Act*.

Although the legislation is controversial and cumbersome, it serves a very specific need in the Canadian justice system. Utilizing all of the community's resources, the legislation focuses on accountability and responsibility. The ultimate goal is protection of the public and the development of youth into contributing members of society.

[1] Senate Debates (Hansard), 1st Session, 37th Parliament, Vol. 139, Issue 70, Nov. 20, 2001.

GLOSSARY

Youth justice

Common law is law that comes from years of court decisions and legal precedent. It is unwritten.

Counsel is a lawyer appointed or engaged to advise or represent a client in legal matters.

Crime prevention involves measures that help decrease or prevent crime, such as educational programs in schools or programs through organizations such as Crime Stoppers.

Custodial institutions are supervised places where a youth who has been employed or registered in a program during the day spends the night.

Discretionary prohibition is a prohibition that is not mandatory under the *Criminal Code* or the *Youth Criminal Justice Act*. It is the judge's decision to put the prohibition in place.

Disposition is another word for sentence.

Diversion and community conferencing are remedies or sentences that do not involve the court.

Driving disqualification results in a youth being prohibited from driving due to committing a serious offence.

Rather than a youth being charged with an offence, **extrajudicial sanctions** are imposed from outside of the normal sentencing procedures. The youth does not have a criminal record.

Failing to comply involves not carrying out the conditions of an order of the court.

First degree murder is committed with premeditation or during the course of a serious crime (such as kidnapping) and requires the most serious punishment under the law.

Incarceration involves placement and restricted supervision of a convicted offender in an institution, such as a prison.

An **intensive rehabilitative custody order** is a sentence that is to be served in a secure medical facility.

Jurisdiction is the power, right or authority to interpret and apply the law.

Law enforcement oganizations, such as police departments or the RCMP, have the power to enforce laws.

Legal aid is provided by an organization established to serve the legal needs of people who, for financial reasons, cannot retain their own counsel.

When a young person is charged with a **presumptive offence** the prosecution and sentencing proceeds in the ordinary adult court system unless the youth can show why it should remain in the youth court.

Punitive terms are special terms in a sentence ordered by a court against a youth in exceptional cases where the court wants to give a strong message to the community that similar conduct will be severely punished.

A **prognostication** is a premature decision.

Reintegration places a youth who has served a sentence back into society through the parole system.

A person who commits more than one crime is a **reoffender.**

A **retainer** is a fee paid to a lawyer for advice or services or for a claim on services when needed.

Second degree murder is committed without premeditation (prior thought or planning), but with the intent to kill.

A law enacted by the legislative branch of a government is called a **statute.**

6 Youth justice

Charts and visual organizers

The charts and visual organizers can be used to reinforce, enrich and extend the content provided in the summary and backgrounders.

CHART

A comparison of the *Young Offenders Act* and the *Youth Criminal Justice Act*

What are the major differences between the *Young Offenders Act* and the *Youth Criminal Justice Act*?

	Youth Criminal Justice Act	***Young Offenders Act***
Declaration of principle	• Provides clear statement of goal and principles underlying the *Act* and the youth justice system • Includes specific principles to guide the use of extrajudicial measures, the imposition of a sentence and custody	• Does not identify the principal goal of the system; contains inconsistent and competing principles • Contains some of the same themes as the *Youth Criminal Justice Act* • Is not supplemented by more specific principles at the various stages of the youth justice process
Measures outside the court process	• Creates a presumption that measures other than court proceedings should be used for a first non-violent offence • Encourages the use of other measures in all cases where they are sufficient to hold a young person accountable • Encourages the involvement of families, victims and the community	• Allows the use of measures other than court proceedings (alternative measures) but does not create a presumption that they should be used for minor offences
Youth sentences	*Sentencing principles* • Includes specific principles, including the need for proportionate sentences and the importance of rehabilitation *Sentencing options* • Reserves custody for violent or repeat offences • Requires all custody sentences to be followed with a period of supervision in the community • Includes new options to encourage the use of non-custody sentences and support reintegration • Includes intensive custody and supervision order for serious violent offenders • Empowers youth court to impose an adult sentence, eliminating transfer to adult court • Lowers the age limit for presumption of adult sentences for the most serious offences to 14 (However, provinces will have increased flexibility age limits within their jurisdiction.) • Extends the most serious offences that carry a presumption of an adult sentence to include a pattern of serious, repeat, violent offences • Allows the Crown to renounce the application of the presumption of adult sentence (In this case, the judge who finds the young person guilty has to impose a youth sentence.)	*Sentencing principles* • Included in general principles but sometimes principles are inconsistent and competing *Sentencing options* • Places no restrictions on the use of custody • Has no requirement for community supervision following custody • Does not provide for *Youth Criminal Justice Act* options like reprimand, intensive support and supervision, or custody and supervision orders for serious violent offenders • Calls for a lengthy transfer hearing prior to trial that takes place in adult court without special procedural protections granted for youth • Sets the age limit for the presumption of adult sentence at 16 • Defines offences that carry a presumption of an adult sentence as murder, attempted murder, manslaughter and aggravated sexual offence only • Does not allow the Crown to renounce the application of the presumption of adult sentence

What are the major differences between the *Young Offenders Act* and the *Youth Criminal Justice Act*?

	Youth Criminal Justice Act	***Young Offenders Act***
Publication	• Permits publication if an adult sentence is imposed, or if a youth sentence is imposed for an offence that carries a presumption of adult sentence, unless the judge decides publication is inappropriate • Permits publication only after the young person has been found guilty	• Permits publication only if a youth is transferred to adult court to be sentenced as an adult • Permits publication before a youth is found guilty
Victims	• Recognizes concerns of victims in principles of the *Act* • Gives victims a right of access to youth court records and some other records • Encourages having victims play a role in formal and informal community-based measures • Establishes the right of victims to information on extrajudicial measures taken	• Does not mention victims in the principles • Permits victims to have access to records • Does not recognize victims' role in the process other than their right to produce a victim's impact statement • Does not provide for a right of victims to information on alternative measures taken
Voluntary statements to police	• Allows voluntary statements to be admitted into evidence, despite minor, technical irregularities in complying with the statutory protections for young persons	• Prevents a statement from being admitted into evidence if there is any minor violation of statutory protections
Advisory groups (conferences)	• Allows these groups to advise on appropriate extrajudicial measures, conditions for release from pretrial detention, appropriate sentences and reintegration plans • Provides for conferences to include parents of the young person, victim, community agencies or professionals	• Does not provide for advisory groups
Custody and reintegration	• Requires that all custody sentences comprise a portion served in custody and a portion served under supervision in the community • Requires that a plan for reintegration in the community be prepared for each youth in custody • Allows the granting of reintegration leaves for up to 30 days	• Does not require supervised reintegration after custody • Does not require planning of reintegration during custody • Allows the granting of temporary leaves for up to 15 days

VISUAL ORGANIZER

Retrieval chart

Rights and responsibilities from different perspectives

How does the Canadian government define the rights and responsibilities of youth?	What rights and responsibilities do youth believe they should have?
Rights	
Responsibilities	

Assessment rubrics

This appendix includes rubrics that can be used to assess student activities, assignments and projects. The rubrics can be adapted for use with activities included in each thematic section of this teaching resource.

APPENDIX

Assessment rubrics

Visual organizers

4/Excellent	Demonstrates an understanding of the topic and its relationships to concepts and ideas; provides appropriate labels and organizers; provides information that reflects the topic; makes links appropriately; and uses visual organizers appropriately
3/Proficient	Displays understanding of the topic and its relationships to concepts and ideas; provides appropriate labels and organizers; provides information that relates to the topic; attempts to make links; uses visual organizer appropriately
2/Acceptable	Identifies concepts and ideas that relate to the topic; provides labels and organizers; includes information that relates to the topic; uses the format of the visual organizer
1/Limited	Provides information related to the topic; uses parts of the visual organizer to present information

Group activities

4/Excellent	Articulates clear understanding of the group task and the role each individual plays in the group; listens to group members; expresses opinions and ideas; contributes information and research; works with the group to fulfil group responsibilities
3/Proficient	Articulates understanding of the group task and the role each individual plays within the group; listens to group members; contributes ideas and information; fulfils individual responsibilities to the group
2/Acceptable	Describes the group task; describes his or her individual role; listens to group members; contributes information to the group
1/Limited	Describes his or her individual role within the group; listens to others in the group; contributes ideas

Analyzing information

4/Excellent	Identifies key points in the information; draws conclusions about the relevance and quality of the information presented; identifies and considers the points of view and any biases reflected by the creator of the source; looks for evidence from multiple sources to verify information; distinguishes between different types of sources and the information they present; distinguishes and makes comparisons between factual information and opinions
3/Proficient	Identifies key points in the information; draws conclusions about the relevance and quality of the information presented; identifies points of view and the presence of bias in the information; consults multiple sources of information to compare what is presented; identifies different sources of information on similar topics; identifies and compares factual information and opinion in the information
2/Acceptable	Summarizes the information; draws conclusions about the quality of information presented; identifies points of view reflected in the information; identifies other sources of information on similar topics; identifies factual information and opinions in the information
1/Limited	Lists information directly from the source; identifies the creator of the source and why it was created

Research

4/Excellent	Develops a strategy for conducting research; develops and identifies research and inquiry questions; analyzes and assesses sources of information selected for the research task; records information using an appropriate format; applies research to inquiry questions; makes effective use of research time
3/Proficient	Identifies a strategy for conducting research; identifies research and inquiry questions; selects and assesses sources of information; records information using an appropriate format; identifies links between research collected and inquiry questions; makes effective use of research time
2/Acceptable	Identifies a strategy for conducting research; records research and inquiry questions; selects and reads sources of information; records information using an appropriate format; uses information from sources to answer inquiry questions
1/Limited	Selects and reads sources of information; records research and inquiry questions; records information using an identified format; identifies information from sources that relate to inquiry questions

Developing an issue or position

4/Excellent	Explores issues in a way that is insightful and mature; presents arguments that are consistent and forceful; demonstrates maturity, insight and/or originality; selects comprehensive, specific, relevant and accurate examples
3/Proficient	Explores the issue clearly and adeptly; presents logical and competently developed arguments; selects purposeful, and usually specific, relevant and accurate examples
2/Acceptable	Explores the issue in a straightforward and conventional way; selects arguments that are generally sound, but may lack persuasiveness and consistency; selects conventional examples that reveal an adequate understanding of content and are relevant
1/Limited	Explores the issue; presents arguments of questionable logic or that are repetitive, unspecific, contradictory, simplistic or based on uninformed belief; selects examples that are unfocused or inappropriate and are potentially relevant but contain inaccuracies or extraneous detail

Writing

4/Excellent	Opens the piece of writing to catch the reader's attention; presents events and ideas in time order or in another order the reader can follow; includes background information, sensory descriptions, appropriate dialogue or action, and artistic and literary techniques; demonstrates understanding of links between the topic and research; conveys the significance of points of view involved
3/Proficient	Uses an introduction to open the piece of writing; includes events and ideas in time order or another order the reader can follow; includes information, description, dialogue, and artistic and literary techniques; identifies links between topic and research; identifies significance of points of view involved
2/Acceptable	Introduces the topic to the reader; includes events and ideas in an appropriate order; includes information and description; focuses on the topic and research; identifies points of view represented in the piece
1/Limited	Includes events and ideas; includes information; relates information to topic

Projects

4/Excellent	Develops a planning strategy and process; identifies goals and purpose; demonstrates understanding of topics and concepts represented; selects an appropriate method of constructing and creating the project; uses research and information gathered appropriately and effectively; demonstrates ability to summarize and synthesize information; in final presentation displays learning with pride
3/Proficient	Identifies a planning strategy and process; identifies a purpose; selects information related to topics and concepts under study; selects an appropriate method of constructing and creating the project; uses research and information gathered appropriately and effectively; demonstrates ability to summarize information; in final presentation displays learning with pride
2/Acceptable	Uses an identified planning strategy and process; selects information related to topics and concepts under study; selects a method for constructing and creating the project; uses research and information gathered throughout the project; in final presentation displays learning with pride
1/Limited	Selects information related to topics and concepts under study; constructs and creates the project using an identified approach; uses information gathered

TEMPLATE

Assessment rubric

	Criteria	Comments
4/Excellent		
3/Proficient		
2/Acceptable		
1/Limited		